2

1879

Strong 11-320
ap. 8. 79. aug.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~221~~ 31

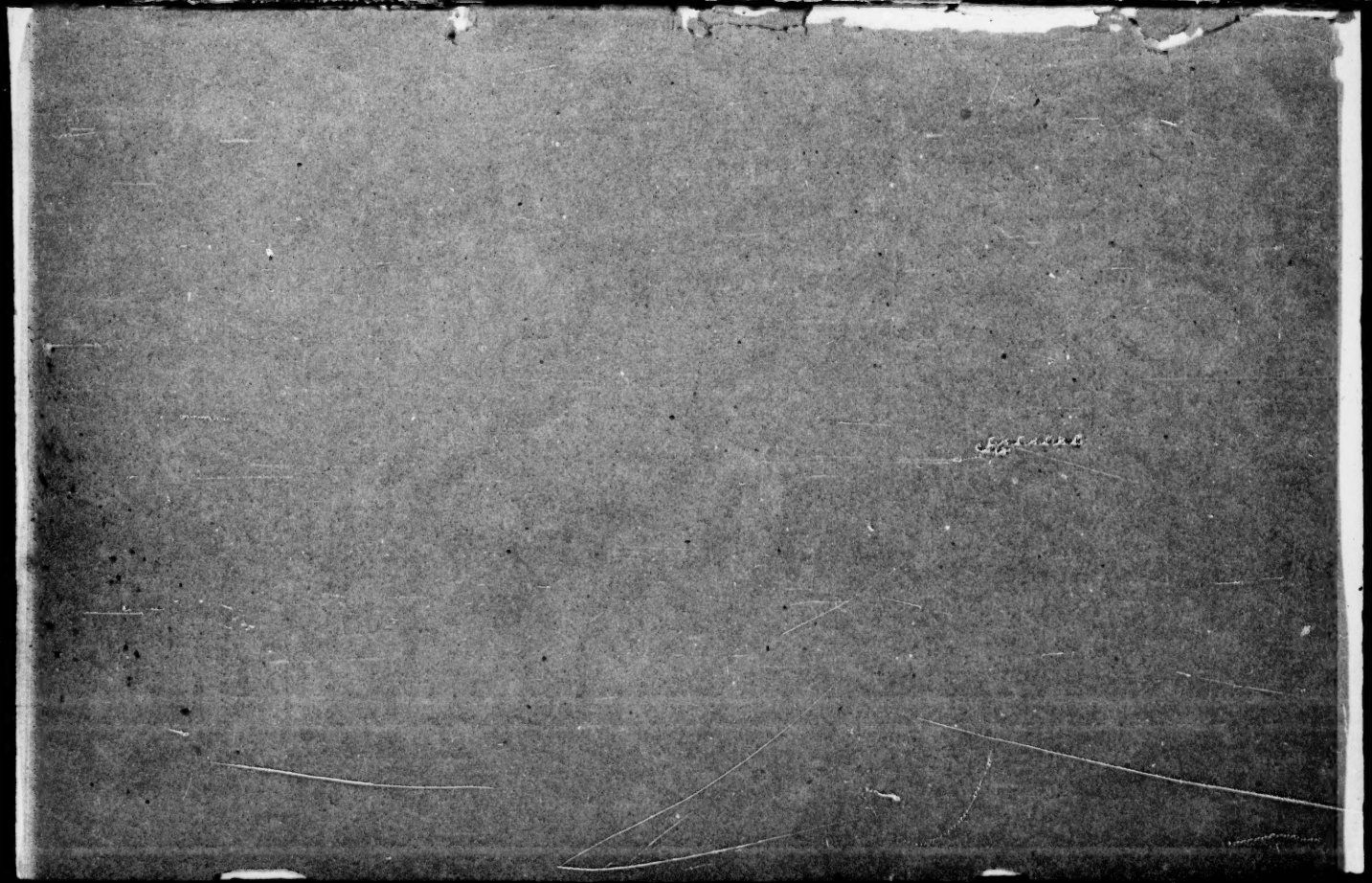
PALMER C. SMITH, JOB R. RENICK, ADMINISTRATOR OF RENICK HUSTON, DECEASED, AND EDWARD J. VAN METER, ADMINISTRATOR, &c., OF THOMAS J. RENICK, DECEASED, APPELLANTS,

VS.

JAMES C. AYER, FREDERICK AYER, ALBERT G. COOK, JOEL D. HARVEY ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 11, 1876.



SUPREME COURT OF THE UNITED STATES.

No. 221.

PALMER C. SMITH, JOB R. RENICK, ADMINISTRATOR OF RENICK HUSTON, DECEASED, AND EDWARD J. VAN METER, ADMINISTRATOR, &c., OF THOMAS J. RENICK, DECEASED, APPELLANTS,

vs.

JAMES C. AYER, FREDERICK AYER, ALBERT G. COOK, JOEL D. HARVEY ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

INDEX.

	Original.	Print.
Bond for costs	2	1
Transcript of record from superior court, Cook County, Illinois	3	2
Complaint	4	2
Summons	24	8
Answer of Goudy and Chandler	27	10
Dismissal as to Goudy and Chandler	30	11
Certificate	30	11
Leave to amend bill	33	12
Answer of Bonney and Griggs	38	15
Replication	56	21
Answer of B. F. Renick	58	22
Answer of Ayer et al	87	31
Replication	99	34
Supplemental bill	101	35
Will of Renick	114	40
Petition for removal	124	43
Bond	127	44
Order for removal	130	45
Clerk's certificate	130	46
Answer of J. Edwards Fay	133	46
Cause referred to Henry W. Bishop, master in chancery	162	57
Answer of Porter, Ferry, Goodman, Harvey and Campbell	163	57
Replication to answer of defendants, Porter et al	179	63

	Original.	Print.
Transcript from superior court of amendments to bill of complaint	180	63
Leave to withdraw replication	192	68
Appearance of defendants McElroy et al.; leave as to answers, and leave to file replication to answer of J. Edwards Fay. Cause set down for hearing. Hearing	192	68
Replication to answer of J. Edwards Fay	194	68
Cause taken under advisement	195	69
Decree	195	69
Certificate of evidence	197	70
Stipulation	198	70
Stipulation as to reference to master and taking proofs	203	72
Deposition of Palmer C. Smith	204	73
Stipulation as to agreement signed by P. C. Smith and Benjamin F. Renick, executor, respectively	223	82
Contract of P. C. Smith	225	82
Stipulation as to notes, and receipt, and as to amendment of bills	227	83
Statement of evidence of W. C. Goudy	230	84
Contract of Benjamin F. Renick, as executor of the last will and testament of Thomas T. Renick, deceased	238	87
Appeal bond	247	91
Clerk's certificate	250	92
Assignment of errors	251	93

a United States circuit court, northern district of Ilinois.

1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-rooms in the city of Chicago, the district aforesaid, before the judges thereof, on Monday, the thirty-first day of July, in the year of our Lord one thousand eight hundred and seventy-six and of our Independence the 101st year.

WILLIAM H. BRADLEY, *Clerk.*

PALMER C. SMITH AND JOB R. RENICK, administrators de bonis non of the estate of Renick Huston, deceased,
vs.
CHARLES C. BONNEY, J. EDWARDS FAY, Charles W. Griggs, Benjamin F. Renick, Benjamin F. Renick as executor of Thomas T. Renick, deceased, James C. Ayer, Frederick Ayer, Albert G. Cook, and Joel D. Harvey, Henry H. Porter, William H. Ferry, and James B. Goodman, trustees of The West Chicago Land Company, George C. Campbell, Anthony McElroy, Edward H. Davidson, Charles B. McElroy, and John McElroy. } In chancery.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

2 Be it remembered that on the 21st day of June, A. D. 1876, came said defendants by Mess'rs Goudy, Chandler and Skinner, their solicitors, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois at Chicago, in the district aforesaid, their bond for costs, and at the same time filed a transcript of the record of the proceedings had in the superior court of Cook County, in the State of Illinois, in said entitled cause, which said bond for costs and transcript are respectively in the words and figures following, to wit:

Bond for costs.

Circuit court. Term A. D. 187 . In chancery.

UNITED STATES OF AMERICA,
Northern District of Illinois ss:

PALMER C. SMITH ET AL.
vs.
CHARLES C. BONNEY, JAMES C. AYER, ET AL.

We enter ourselves security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court; and in default of payment by defendants, James C. Ayer, Frederick Ayer, and Albert C. Cook, of any costs ordered or adjudged to be paid by them, we hereby agree and stipulate that execution may issue against our property for any costs taxed against them, dated this 21st day of June, A. D. 1876.

GOUDY, CHANDLER AND SKINNER.

(Endorsed:) Filed June 21st, A. D. 1876. W'm H. Bradley, clerk.

3 TRANSCRIPT OF RECORD FROM SUPERIOR COURT OF COOK COUNTY.

UNITED STATES OF AMERICA,
State of Illinois, County of Cook, ss:

Pleas before the honorable Samuel M. Moore, one of the judges of the superior court of Cook County, in the State of Illinois, holding a branch court of said court at a regular term of said superior court of Cook County, begun and holden at the court-house, in the city of Chicago, in said county and State, on the first Monday, being the first day of May, in the year of our Lord one thousand eight hundred and seventy-six and of the Independence of the United States of America the one hundredth.

Present, the honorable Samuel M. Moore, judge of the superior court of Cook County; Charles H. Reed, prosecuting attorney; Francis Agnew, sheriff of Cook County.

Attest.

JOHN J. HEALY, *Clerk.*

4 Be it remembered that heretofore, to wit, on the third day of February, in the year of our Lord one thousand eight hundred and seventy-six, Palmer C. Smith et al., by Miller and Frost, their solicitors, filed in the office of the clerk of the superior court of Cook County their certain bill of complaint and bond for costs, which are in the words and figures following, to wit:

Superior court of Cook County to the March term, A. D. 1876. In chancery.

To the honorable judges of the superior court of Cook County in chancery sitting:

Humbly complaining show unto your honors Palmer C. Smith and Job R. Renick, of the State of Ohio, administrators de bonis non of the estate of Remick Huston, deceased, with the will annexed; that Remick Huston departed this life in the month of February, A. D. 1864, at his then residence in Pickaway County, in the State of Ohio, leaving his last will and testament, a copy of which is hereto annexed and prayed to be taken as a part hereof, and marked "Complainant's Exhibit A";

5 that said will was duly probated in said county of Pickaway, and letters testamentary duly issued by the probate court of said county on or about February 12th, A. D. 1864, to Thomas T. Remick, executor named in said will, as executor of said estate, and the said Thomas T. Remick duly qualified and entered upon his office as executor of said estate. That afterwards, and on or about the seventh day of August, A. D. 1873, said Thomas T. Remick departed this life in said county of Pickaway, his then place of residence, leaving his last will and testament, which was duly probated in said county, and letters testamentary upon his estate were duly issued by the probate court of said county to Benjamin F. Remick, as executor of his estate, on or about the day of August, A. D. 1873, and the said Benjamin F. Remick duly qualified and entered upon the duty of his office as such executor.

Your orators further show unto your honors that on or about the fifth day of September, A. D. 1873, your orators were duly appointed by the

probate court of said county of Pickaway as administrators de bonis non, with the will annexed, of the estate of said Remick Huston, a copy of which letters is hereto annexed, marked "Complainant's Ex-
6 hibit B," and prayed to be taken as a part hereof, and that your orators have duly qualified and entered upon the duties of their office as such administrators.

Your orators would further show unto your honors that the said Remick Huston was, at the time of his death and for many years past been, the owner in fee of the following-described real estate, in the county of Cook, State of Illinois, to wit:

The west half (W. $\frac{1}{2}$) of the southwest quarter (S. W. $\frac{1}{4}$) of section number ten (10), township number thirty-nine (39), range 13 east of the third principal meridian. That he had for many years employed Charles C. Bonney and J. Edwards Fay, doing business in the city of Chicago, as copartners, under the name of Bonney and Fay, as his attorneys at law respecting said lands and real estate, and said Bonney and Fay well knew of the death of said Remick Huston, and that he was at the time of his decease the owner of said land above described.

Your orators would further show unto your honors that said Thomas T. Remick, after said letters testamentary were issued to him, employed said Bonney and Fay as the attorneys of said estate of Remick
7 Huston, in respect to said lands, and while they were so employed and acting as said attorneys for said estate said land was sold at a judicial sale, and the apparent legal title thereto became vested in your orator, Job R. Remick; but the said Job R. Remick held said title in trust for the said estate of Remick Huston, and it became and was well known to said Bonney and Fay that said Job R. Remick had no beneficial interest in said land, but simply held the legal title thereto for the purpose of promoting a sale and conveyance of the same, and that the beneficial interest and the complete ownership of the beneficial interest of the estate therein belonged to said estate of Remick Huston.

Your orators would further show unto your honors, that Charles W. Griggs afterwards entered into a copartnership with said Bonney and Fay, in the practice of the law in the city of Chicago; and their said business was thereafter prosecuted in the firm-name of Bonney, Fay and Griggs, and said firm therefore became, and thereafter continued to be, the legal advisers of said estate of Remick Huston.

8 Your orators would further show unto your honors that afterwards, and on or about the 15th day of July, A. D. 1872, the said Thomas T. Remick, as executor of said estate of Remick Huston, effected a sale of said land to one Joel D. Harvey, for the sum of $157,000, $39,250 cash, and balance in equal payments in one, two, and three years, with interest, etc., from said 15th day of July, said deferred payments to be secured by the promissory notes of said Joel D. Harvey and a trust-deed or mortgage of said lands. That said sale was consummated by a conveyance of said lands by said Job R. Remick to said Joel D. Harvey, the payment of said cash payment by said Harvey and the execution of said promissory notes by said Harvey of $39,250.00 each, payable in one, two, and three years from date, to wit, the said 15th day of July, and payable to the said Thomas T. Remick, and the execution of a trust-deed of said premises by said Joel D. Harvey to said J. Edwards Fay, as trustee, to secure the payment of said notes and trust-deed, were by said Thomas T. Remick left in the custody and possession of said Bonney, Fay and Griggs, as attorneys of said estate of
9 Remick Huston, and said trust-deed or mortgage still remains in their possession, and said notes and trust-deed became and were,

and the said Bonney, Fay and Griggs well knew that the same became and were, the sole property of said estate of Remick Huston. And your orators expressly charge that they held the same for said estate, and it became and was their duty to account for the same, or any proceeds that might be realized therefrom, to the representatives of said estate.

And your orators would further show unto your honors that after their appointment as administrators, with the will annexed, of said estate of Remick Huston, they advised said Bonney, Fay and Griggs of their appointment as attorneys of said estate, and frequently advised with them as attorneys of said estate respecting said notes.

Your orators would further show unto your honors that after their appointment as aforesaid they were importuned by parties interested in the firm of B. F. Remick and Co., of Canton, Ohio, and composed of Benjamin F. Remick and Peter G. Classen, and carrying on the
10 business of manufacturing chromatic printing-presses, to allow some portion of the funds belonging to the estate of said Remick Huston to be loaned to said firm or invested in said business, and your orators peremptorily refused to allow such application or use of said funds, or any portion thereof, and your orators took the precaution of distinctly saying to said Bonney, Fay and Griggs, the attorneys of said estate, and while they held said notes, no portion of the funds belonging to said estate would be permitted by your orators to go into said firm or said business, or into the hands of said Benjamin F. Remick, but that the same must be paid and accounted for to your orators as administrators of said estate.

Your orators further show unto your honors that notwithstanding this, and without in any manner consulting your orators, or either of them, in the premises, the said Bonney, Fay and Griggs did, on or about the day of May, A. D. 1875, deliver one of said promissory notes, being for the sum of $39,250, due July 15th, 1874, and long after said note had become due and payable to said Benjamin F. Remick,
11 for the purpose of enabling the said Remick to use the same for the benefit of the firm of B. F. Remick & Co.; and the said Remick thereupon, and without any consideration therefor, endorsed said note as executor of said Thomas T. Remick, deceased, to said B. F. Remick and Co., and at the same time endorsed the firm name of B. F Remick and Co. upon said note, and delivered the same so endorsed to J. C. Ayer and Co., a firm composed of James C. Ayer and Frederick Ayer and Albert G. Cook, and pledged the same collateral security to said J. C. Ayer and Co. for and on account of some claim in favor of said J. C. Ayer Co., but the precise terms of said pledge or transfer are to your orators unknown, which said note is now, as your orators are informed and believe and charge the fact to be, held by William C. Goudy and George Chandler, doing business in Chicago under the firm name of Goudy and Chandler, as attorneys and agents for said J. C. Ayer and Co.

And your orators further show and charge the fact to be, that at the time of the delivery of said note to said B. F. Remick for the purpose aforesaid, said firm of B. F. Remick and Co. was utterly insolv-
12 ent, and this fact was then well known to said Bonney, Fay and Griggs and said B. F. Remick, and your orators expressly charge that said Benjamin F. Remick, who endorsed said note as executor of Thomas T. Remick, is the leading member of the said firm of B. F. Remick Co., to whom the same was so endorsed, and for whose benefit the same was used, by placing the same with said J. C. Ayer Co., as

aforesaid, and that this fact was well known to said J. C. Ayer and Co., at the time they received said note, as aforesaid.

And your orators expressly charge that said J. C. Ayer and Co. are not bona-fide holders of said note, and upon information and belief your orators aver that at the time of said transfer and endorsement said J. C. Ayer Co. had notice of the fact that said note did not belong to said firm of B. F. Remick and Co., and that it was then being wrongfully transferred to said firm of J. C. Ayer Co., and said J. C. Ayer and Co. have no right to hold the same as against your orators, nor even as against said estate of Thomas T. Remick, deceased, and that any assertion of title thereto by the said J. C. Ayer and Co. is a fraud upon
13 your orators, and upon said estate of which your orators are administrators, as aforesaid.

Your orators would further show unto your honors that, as they are informed and believe, some time in the month of November last past, said Benjamin F. Remick executed to said J. Edwards Fay, member of said firm of Bonney, Fay and Griggs, and to whom, as your orators believe, the legal business performed by said firm was principally left, so far as the same has been rendered in behalf of said estate of Remick Huston and of your orators, as the legal representatives of said estate of Remick Huston, his promissory note for $50,000, and payable one day after date, and at the same time executed to him a trust deed or mortgage upon some fourteen hundred acres of land in Pickaway County, in the State of Ohio, which deed was duly filed for record and recorded in said county to secure the payment of said note, which said note is still in the possession, as your orators are informed and believe, of said Fay, or of said Bonney, Fay and Griggs.

And your orators charge, upon information and belief, that said
14 note and trust deed or mortgage was given by said Benjamin F. Remick to said Fay as security and indemnity to said firm of Bonney, Fay and Griggs, amongst other things for any loss or damage which they might sustain by reason of the transfer of the note aforesaid to said J. C. Ayer and Co., and by the payment of any funds of said estate therefor made by them or either of them to said Benjamin F. Remick.

And your orators would further show unto your honors that they did not learn of the transfers of said promissory note as aforesaid, and the delivery of the same to said J. C. Ayer and Co., as aforesaid, until about the 29th day of January last, nor of the particular manner of the transaction until about the time of the preparation of this their bill of complaint; that as soon as they learned that said note had been placed beyond their control, your orator, Palmer C. Smith, as soon as he could do so, came to the city of Chicago and called upon said Bonney, Fay and Griggs, and particularly upon said Fay, for an explanation of said transfer of said note, but could obtain no explanation for his conduct
15 in the premises other than that he supposed said Benjamin F. Remick was perfectly good, and that said estate of Remick Huston would not ultimately lose anything by said transaction, but not pretending that he did not all the while well know that said note belonged to the funds of said estate of Remick Huston, or that he had any authority from your orators or any person entitled to said funds to divert the same, and your orators, upon information and belief, charge the truth to be that all the members of said firm of B. F. Remick and Co., including said Benjamin F. Remick, were, at the time of the wrongful transfer of same promissory note, and the giving of said note of $50,000, and the trust deed or mortgage to secure the payment of the same, *were* in-

solvent, and your orators aver that they still are insolvent; that they are unable to obtain possession of said promissory note so wrongfully transferred as aforesaid, without the interposition and aid of this honorable court, and your orators greatly fear that, unless restrained by the injunction of this honorable court, said Goudy and Chandler may part with the possession of said promissory note for $39,250, and the
16 same may pass beyond the reach and jurisdiction of this honorable court, and that the said J. Edwards Fay will also, unless restrained by the injunction of this honorable court, part with the possession of the said note for $50,000, and the mortgage or trust deed given to secure the same, and that the same will be placed beyond the jurisdiction of this honorable court, or that he will surrender the same to the said Benjamin F. Remick.

To the end, therefore, that the said Charles C. Bonney, J. Edwards Fay, and Charles W. Griggs, composing the firm of Bonney, Fay and Griggs; Benjamin F. Remick and Benjamin F. Remick as executor of the estate of Thomas T. Remick, deceased; and James C. Ayer, Frederick Ayer, and Albert G. Cook, composing the firm of J. C. Ayer and Co.; Joel D. Harvey and William C. Goudy and George Chandler, composing the firm of Goudy and Chandler, may be made defendants herein, and well and truly answer the premises, their answer under oath being hereby waived in pursuance of the statute in such cases made and provided, and that said promissory note for $39,250, and the trust deed given to secure the payment of the same, may be the final
17 decree of this honorable court be declared to be the property of your orators and to be delivered and surrendered to your orators by the present holders thereof, and that the said Joel D. Harvey be decreed to pay said promissory note and the interest thereon to your orators, and be perpetually enjoined from paying the same to any other person or party, and that your orators may have any other and further or other and different relief as to your honors shall seem meet:

May it please your honors to grant unto your orators in the mean time a preliminary writ of injunction to be issued out of and under the seal of this honorable court, directed to the said Charles C. Bonney, J. Edwards Fay, and Charles W. Griggs, composing said firm of Bonney, Fay and Griggs, and to the said William C. Goudy and George Chandler, composing said firm of Goudy and Chandler, and said James C. Ayer and Frederick Ayer and Albert G. Cook, composing said firm of J. C. Ayer and Co., commanding and enjoining said Bonney, Fay and Griggs to desist and refrain from disposing of said trust deed given to
18 secure said note for $39,250, or said note for $50,000, or the mortgage or trust-deed given to secure the same, or from in any manner interfering with the same until the final decree of the court herein, and commanding and enjoining the said J. C. Ayer and Co. and said member of said firm and said Goudy and Chandler from disposing of said note for $39,250, or parting with the possession thereof, or in any manner interfering with the same until the final decree of the court herein, and that upon the final hearing of this cause said J. C. Ayer and Co. and said member of said firm and said Goudy and Chandler may be directed to deliver the said note to your orators and said injunction be made perpetual; and may it please your honors to grant unto your orators a writ of subpœna, to be directed to each of the above-named defendants, and commanding them and each of them to be and appear before this honorable court by a day to be therein named, and answer

the premises and abide by such order and decree as to your honors shall seem meet, and your orators will ever pray, etc.

19 PALMER C. SMITH.
JOB R. REMICK,
Per P. C. SMITH.

MILLER and FROST.

Complainants' Exhibit A.

I, Remick Huston, of the county of Pickaway and State of Ohio, lieutenant O. V. I., do make and publish this my last will and testament, hereby revoking all former wills by me made.

Item 1st. I give and bequeath to Miss Anna Marsh, my adopted mother, the sum of five thousand dollars ($5,000).

Item 2d. I give and devise to Susan Huston, Letitia Huston, and Rachel Huston the sum of five hundred dollars each.

Item 3d. I give and devise the residue of my estate, real and personal, to Thomas T. Remick, M'r's Mary Gregg, and M'r's Lavinia Remick, in equal portions, the two shares to Thomas T. Remick and M'r's Mary Gregg, to them, their heirs and assigns, forever, and the portion to M'r's Lavinia Remick to her during the period of her natural life, and at her death to the children of my late uncle and guardian Jonathan Remick, their heirs and assigns, forever.

Item 4th. I do hereby nominate and appoint Thomas T. Remick
20 executor of this my last will and testament, and I hereby authorize him to sell any real estate wherever situated, either at public or private sale, for cash or upon such terms of credit as he may think best, and to execute deeds of conveyance to purchasers for all my said real estate which he may sell, and to execute deeds for real estate sold by me in case where deeds may not have been made.

In testimony whereof I have hereunto set my hand and seal this 10th day of November, 1862.

(Signed) REMICK HUSTON.
(Signed) P. C. SMITH.
C. B. CROUSE.

Complainants' Exhibit B.

Letters of administration.

THE STATE OF OHIO,
Pickaway County, ss:

To all whom these presents shall come, greeting:

Know ye that at a probate court, holden within and for the county aforesaid, on the fifth day of September, A. D. 1873, P. C. Smith and Job R. Remick was duly appointed by said court administrators, with the will annexed, of the estate of Remick Huston, late of said county; and whereas the said P. C. Smith and Job R. Remick having ap-
21 peared before said court accepted said appointment and entered into bond with security, as required by said court.

These are, therefore, to authorize and empower the said P. C. Smith and Job R. Remick to administer according to law all and singular the goods, chattels, moneys, rights, and credits of said deceased, and also the proceeds of all the real estate of said deceased which they may be authorized to sell for the payment of the debts of said deceased, to col-

lect all the debts due to and pay those due from the estate of said deceased, so far as its means will extend and the law require, and to do all things which may be lawfully done in the premises to effect the just and speedy settlement of said estate.

In testimony whereof the seal of said court is hereunto affixed.

Witness James Taylor, judge of said court, this fifth day of September, A. D. 1873.

[SEAL.] JAMES TAYLOR,
Probate Judge.

THE STATE OF OHIO,
Pickaway County, ss:

22 I, James Taylor, probate judge of said county, certify the above to be a true copy of the original letters of administration on file in my office.

Witness my hand and the seal of said court at Circleville, this 5th day of Sept., A. D. 1873.

[SEAL.] JAMES TAYLOR,
Probate Judge.

THE STATE OF ILLINOIS,
Cook County, ss:

Palmer C. Smith, being duly sworn, deposes and says that he is one of the complainants named in the foregoing bill by him subscribed, and that he has read said bill and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters stated upon information and belief, and that as to those matters he believes it to be true.

(Signed) PALMER C. SMITH.

Sworn to and subscribed before me this 2d day of Feb'y, A. D. 1876.

[SEAL.] HENRY B. MASON, *N. P.*

23 STATE OF ILLINOIS,
Cook County:

Superior court of Cook County.

PALMER C. SMITH AND JOB R. REMICK, administrators de bonis non, with will annexed, of Remick Huston, deceased,

CHARLES C. BONNEY, J. EDWARDS FAY, CHARLES W. GRIGGS, Benjamin F. Remick, executor of Thomas T. Remick, deceased, James C. Ayer, Frederick Ayer, Albert G. Cook, Joel D. Harvey, William C. Goudy, and George Chandler. } In chancery.

We do hereby enter ourselves security for all costs which may accrue in the above cause.

Dated this 3d day of Feb'y, 1876.

MILLER AND FROST.

24 And thereupon, to wit, on the day and year last aforesaid, there issued out of said clerk's office the people's certain writ of summons, which said writ, together with the return of the sheriff thereon endorsed, is in the words and figures following, to wit:

STATE OF ILLINOIS,
Cook County, ss:

The people of the State of Illinois to the sheriff of Cook County, greeting:

We command you that you summon Charles C. Bonney, J. Edwards Fay, Charles W. Griggs, Benjamin F. Remick, Benjamin F. Remick, executor of Thomas T. Remick, dec., James C. Ayer, Frederick Ayer, Albert G. Cook, Joel D. Harvey, William C. Goudy, and George Chandler, if they shall be found in your county, personally to be and appear before the superior court of Cook County on the 1st day of the term thereof to be held at the court-house in Chicago, in said Cook County, on the first Monday of March next, to answer unto Palmer C. Smith and Job R. Remick, administrators de bonis non, with will annexed,
25 of Remick Huston, in their certain bill of complaint filed in said court on the chancery side thereof, and have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness John J. Healy, clerk of our said court, and the seal thereof, at Chicago aforesaid, this 3d day of Feb'y, A. D. 1876.

[SEAL.] (Signed) JOHN J. HEALY, *Clerk.*

Served the within writ on the within-named Charles C. Bonney by delivering to him a copy thereof this 5th day of February, 1876. Also served the within writ on the within-named J. Edwards Fay, Charles W. Griggs, Joel D. Harvey, William C. Gondy, and George Chandler by delivering to each of them a true copy thereof this 3d day of February, 1876. All the other within-named defendants are not found in my county.

FRANCIS AGNEW,
Sheriff,
Per C. G. PUSHICK,
Deputy.

Also served this writ on the within-named Albert G. Cook by delivering a copy thereof to him the 1st day of March, 1876.

FRANCIS AGNEW,
Sheriff,
Per P. H. TIERNEY,
Deputy "

26 And afterwards, to wit, on the fourth day of February, in the year last aforesaid, there was filed in said clerk's office a certain affidavit, which is in the words and figures following, to wit:

Superior court of Cook County. In chancery.

STATE OF ILLINOIS,
Cook County:

PALMER C. SMITH AND JOB R. REMICK, administrators de bonis non, with will annexed, of Remick Huston, dec.,
vs.
CHARLES C. BONNEY, J. EDWARDS FAY, CHARLES W. GRIGGS, Benjamin F. Remick, Benjamin F. Remick, executor of Thomas T. Remick, dec., James C. Ayer, Frederick Ayer, Albert G. Cook, Joel D. Harvey, William C. Goudy, and George Chandler. } In chancery.

Henry G. Miller, being duly sworn, upon oath deposes and says that

he is one of the solicitors for the complainants in the above-entitled cause; that Benjamin F. Remick, Benjamin F. Remick, executor of Thomas T. Remick, deceased, James C. Ayer, Frederick Ayer, and Albert G. Cook, defendants herein, reside out of this State, and that said
27 Benjamin F. Remick and Benjamin F. Remick, executor of Thomas T. Remick, deceased, reside in Canton, Ohio, and that James C. Ayer, Frederick Ayer, and Albert G. Cook reside in Lowell, Massachusetts.

(Signed) HENRY G. MILLER.

Subscribed and sworn to before me this 4th day of February, A. D. 1876.

(Signed) JOHN J. HEALY, *Clerk.*

And afterwards, to wit, on the ninth day of February, in the year last aforesaid, William C. Goudy et al. filed in said clerk's office their certain answer, which is in the words and figures following, to wit:

Superior court of Cook County. In chancery.

STATE OF ILLINOIS,
County of Cook, ss:

PALMER C. SMITH, JOB R. REMICK, ADMINISTRATOR' DE BONIS NON, WITH THE WILL ANNEXED, OF REMICK HUSTON,

CHARLES C. BONNEY, JAMES C. AYER, ET AL.

The joint and several answer of William C. Goudy and George Chandler, two of the defendants, to the bill of complaint of Palmer C. Smith and Job R. Remick, administrator':

28 These defendants, securing to themselves all benefit of exception to the errors and insufficiencies of said bill of complaint, for answer thereto, or to so much thereof as they deem it natural for them to make answer and to say they have no interest of any kind or nature in the matters stated in said bill of complaint; and they further state that they have not in their possession the notes of the said Joel D. Harvey described in said bill, or either of them, and have no control thereof in any way, and have had no such possession or control thereof at the time of filing said bill; and they state that the only connection they have ever had with either of said notes is this, that the defendant Goudy, at or before the time when one of said notes was transfer'ed to said James C. Ayer and Company, made an examination of the title to the property described in the deed of trust securing said note, and an examination of the will of Thomas T. Remick at the request of said James C. Ayer and Co., and said Goudy received said note and at once transmitted the same to said James C. Ayer Co., and since then
29 these defendants have had no control or possession of the same.

And now, having sufficiently answered, these defendants pray to be hence dismissed with their costs.

(Signed) WILLIAM C. GOUDY.
GEORGE CHANDLER.

STATE OF ILLINOIS,
County of Cook, ss:

George Chandler, being duly sworn, says that he is one of the above

defendants, and that he has read the foregoing answer and understands its contents, and that the same is true in substance and in fact.

GEORGE CHANDLER.

Subscribed and sworn to before me this 9th day of February, A. D. 1876.

[SEAL.] WILLIAM J. MANNING, *N. P.*

And thereupon, to wit, on the day and year last aforesaid, the same being one of the days of the February term of said court, the following, among other proceedings, were had in said court and entered of record, to wit:

30 *Bill.*

P. C. SMITH ET AL.
vs.
CHARLES C. BONNEY ET AL. } 3519, 60746.

On motion of Miller and Frost, complainant's solicitors, it is ordered by the court that this suit be, and the same is hereby, dismissed at complainant's costs, as the defendants William C. Goudy and George Chandler.

And afterwards, to wit, on the eleventh day of February, in the year last aforesaid, there was filed in said clerk's office a certain certificate, which is in the words and figures following, to wit:

Superior court of Cook County.

STATE OF ILLINOIS,
County of Cook:

PALMER C. SMITH ET AL.
CHARLES C. BONNEY.

I, John J. Healy, clerk of the superior court of Cook County in and for said county, in the State of Illinois, do hereby certify that on the 11th day of February, A. D. 1876, I sent by mail a notice, a copy of which is hereto attached, marked "Exhibit A," to each of the following defendants, and addressed as follows:

31 One copy to Frederick Ayer, Lowell, Massachusetts.
" " " James C. Ayer, " "
" " " Albert G. Cook, " "
" " " Benjamin F. Remick, Canton, Ohio.
" " " Benjamin F. Remick, executor of Thomas T. Remick, deceased, Canton, Ohio.

JOHN J. HEALY, *Clerk.*

EXHIBIT A.

Chancery notice.

Superior court of Cook County, March term, A. D. 1876. In chancery.

STATE OF ILLINOIS,
Cook County, ss:

PALMER C. SMITH AND JOB R. REMICK, administrators de bonis non, with will annexed, of Remick Huston, deceased,
vs.
CHARLES C. BONNEY, J. EDWARDS FAY, Charles W. Griggs, Benjamin F. Remick, executor of Thomas T. Remick, deceased, Benjamin F. Remick, James C. Ayer, Frederick Ayer, Albert G. Cook, Joel D. Harvey, and Henry H. Porter, William H. Ferry and James B. Goodman, trustees of the West Chica Land Company, George C. Campbell, Anthony McElroy, Edward L. Davidson, Charles B. McElroy, and John J. McElroy.

32 Affidavit of non-residence of Anthony McElroy, Edward L. Davidson, Charles B. McElroy, and John J. McElroy, defendants above named, having been filed in the office of the clerk of the superior court of Cook County, notice is hereby given to the said Anthony McElroy, Edward L. Davidson, Charles B. McElroy, and John J. McElroy that the above-named complainants heretofore filed their bill of complaint in said court on the chancery side thereof, and that a summons thereupon issued out of said court against the above-named defendants, returnable on the first day of the term of the superior court of Cook County to be held in the court-house, in Chicago, in said Cook County, on the first Monday of March next, 1876, as is by law required, and which suit is still pending.

JOHN J. HEALY, *Clerk.*

MILLER and FROST,
Compl'ts' Sol'rs.

33 And afterwards, to wit, on the fourteenth day of February, in the year last aforesaid, the same being one of the days of the February term of said court, the following, among other proceedings, were had in said court and entered of record, to wit:

Bill.

P. C. SMITH ET AL.
vs.
CHARLES C. BONNEY ET AL. } 3519, 60746.

This day come again the complainants to this suit by their solicitors aforesaid, and thereupon, on motion of said complainants, leave is given them by the court to amend the bill of complaint filed in this cause.

And thereupon on the day and year last aforesaid there issued out of said clerk's office the people's certain writ of summons, which said writ together with the return of the sheriff thereon endorsed is in the words and figures following, to wit:

STATE OF ILLINOIS,
Cook County, ss :

The people of the State of Illinois to the sheriff of said county, greeting:

We command you that you summon Henry H. Porter, William H. Ferry, James B. Goodman, trustees of the West Chicago Land
34 Company, George C. Campbell, Anthony McElroy, Edward L. Davidson, Charles B. McElroy, and John J. McElroy, if they shall be found in your county, personally to be and appear before the superior court of Cook County, on the first day of the term thereof, to be held at the court-house, in Chicago, in said Cook County, on the first Monday of March next, to answer unto Palmer C. Smith and Job R. Remick, administrators de bonis non, with will annexed, of Remick Huston, deceased, in their certain amended bill of complaint filed in said court on the chancery side thereof, and have you then and there this writ with an endorsement thereon in what manner you shall have executed the same.

Witness John J. Healy, clerk of our said court and the seal thereof, at Chicago aforesaid, this 14th day of February, A. D. 1876.

[SEAL.] JOHN J. HEALY.

Served the within writ on the within-named James B. Goodman by delivering a copy thereof to him the 24th day of February, 1876; also served the same on Henry H. Porter by delivering a copy thereof
35 to A. A. Carpenter, a member of his family upwards of the age of ten years, at the usual place of abode of said defendant, informing him of the contents thereof, the 4th day of March, 1876.

The other defendants not found in my county this 6th day of March, 1876.

FRANCIS AGNEW,
Sheriff,
Per GUSTAV A. KORN,
Deputy "

2.00 paid.

And afterwards, to wit, on the sixteenth day of February, in the year last aforesaid, there was filed in said clerk's office a certain affidavit, which is in the words and figures following, to wit:

Superior court of Cook County. In chancery.

STATE OF ILLINOIS,
Cook County :

PALMER C. SMITH AND JOB R. REMICK, administrators de bonis non, with will annexed, of Remick Huston, deceased,
vs.
CHARLES C. BONNEY, J. EDWARDS FAY, Charles W. Griggs, Benjamin F. Remick, Benjamin F. Remick, executor of Thomas T. Remick, deceased, James C. Ayer, Frederick Ayer, Albert G. Cook, Joel D. Harvey and Henry H. Porter, William H. Ferry, and James B. Goodman, trustees of the
36 West Chicago Land Co., George C. Campbell, Anthony McElroy, Edward L. Davidson, Charles B. McElroy, and John J. McElroy.

Henry G. Miller, being duly sworn, upon oath deposes and says that he is one of the attorneys for the complainants in the above-entitled cause, and that Anthony McElroy, Edward L. Davidson, Charles B. McElroy, and John J. McElroy, defendants in the above cause, reside out of this State, and that their place of residence is Springfield, Kentucky.

HENRY G. MILLER.

Subscribed and sworn to before me this 16th day of February, A. D. 1876.

[SEAL.] HENRY B. MASON, *N. P.*

And afterwards, to wit, on the twenty-third day of February, in the year last aforesaid, there was filed in said clerk's office a certain cerificate, which is in the words and figures following, to wit:

Superior court of Cook County.

STATE OF ILLINOIS,
County of Cook:

PALMER C. SMITH ET AL.
CHARLES C. BONNEY.

I, John J. Healy, clerk of the superior court of Cook County
37 in and for said county, in the State of Illinois, do hereby certify that on the 23d day of February, A. D. 1876, I sent by mail a notice, a copy of which is hereto attached, marked "Exhibit A," to each of the following defendants, and addressed as follows:

One copy to John J. McElroy, Springfield, Kentucky.
" " " Edward L. Davidson, " "
" " " Charles B. McElroy, " "
" " " Anthony McElroy, " "

JOHN J. HEALY,
Clerk.

EXHIBIT A.

Chancery notice.

Superior court of Cook County. March term, A. D. 1876. In chancery.

STATE OF ILLINOIS,
County of Cook, ss:

PALMER C. SMITH AND JOB R. REMICK, administrators de bonis non, with will annexed, of Remick Huston, deceased,
vs.
CHARLES C. BONNEY, J. EDWARDS FAY, Charles W. Griggs, Benjamin F. Remick, Benjamin F. Remick, executor of Thomas T. Remick, deceased, James C. Ayer, Albert G. Cook, Frederick Ayer, Joel D. Harvey, William C. Goudey, and George Chandler.

Affidavit of the non-residence of Benjamin F. Remick, executor

38 of Thomas T. Remick, deceased, James C. Ayer, Frederick Ayer, Albert G. Cook, defendants above-named, having been filed in the office of the clerk of the superior court of Cook County, notice is hereby given to the said Benjamin F. Remick, Benjamin F. Remick, executor of Thomas T. Remick, deceased, James C. Ayer, Frederick Ayer, and Albert G. Cook, that the above-named complainants heretofore filed their bill of complaint in said court on the chancery side thereof, and that a summons thereupon issued out of said court against the above-named defendant', returnable on the first day of the term of the superior court of Cook County on the first Monday of March next, 1876, as is by law required, and which suit is still pending.

JOHN J. HEALY,
Clerk.

MILLER AND FROST,
Comp'ts' Sol'rs.

And afterwards, to wit, on the first day of March, in the year last aforesaid, Charles C. Bonney and Charles W. Griggs, defendants, by L. M. Paine, their solicitor, filed in said clerk's office their certain answers, which are in the words and figures following, to wit:

39 Superior court of Cook County. In chancery.

STATE OF ILLINOIS,
County of Cook:

PALMER C. SMITH, JOB R. REMICK, ADMINISTRATORS,
vs.
CHARLES C. BONNEY, J. EDWARDS FAY, Charles W. Griggs, Benjamin F. Remick, administrator and executor, Benjamin F. Remick, James C. Ayer, Frederick Ayer, Albert G. Cook, Joel D. Harvey, Henry H. Porter, William H. Ferry, James B. Goodman, trustees, George C. Campbell, Anthony McElroy, Edward L. Davidson, Charles B. McElroy, and John J. McElroy. } Bill.

The answer of said Charles C. Bonney to the bill of complaint in this case:

This respondent, saving all exceptions and protesting the insufficiency of said bill of complaint, nevertheless for answer thereto, so far as may be expedient or necessary, says that the material facts in relation to the matters and things stated and charged in said bill, so far as the same relate to or concern this respondent, are in substance as follows, to wit:

That this respondent did not participate in or consent to the
40 matters and things complaint of in said bill, and whereof relief is sought in this suit, and is not nor hath been anywise a party thereto, nor responsible therefor, nor hath this respondent been connected therewith, except as is hereinafter set forth and alleged.

That the relation of counsel and client hath never existed between this respondent and any of the persons named in said bill of complaint,

excepting only said J. Edwards Fay and the said Thomas T. Remick, as will be more particularly hereinafter set forth and alleged; and that there is not nor hath been, in the whole course of the business mentioned in said bill, any matter or thing in the hands of possession or under the control of this respondent, whereof he is or can be subject to any relief as is sought in and by said bill of complaint.

That no such firm as that of Bonney and Fay, supposed and mentioned in said bill, ever existed, and that in partnership for the practice of law or otherwise ever existed between this respondent and said Fay, nor between this respondent and said Fay, together with said Charles W. Griggs; but that for some years before said Fay came to occupy office rooms in connection with this respondent, this re-
41 spondent and said Griggs were associated together for the more convenient conduct of an office and the management of cases in the courts; and that about the year 1869 said Fay first occupied office rooms in connection with this respondent, and said Griggs and said supposed firm-name of Bonney, Fay and Griggs came into use for certain office and court purposes, but no partnership was formed nor any joint accounts or dealings with clients had or kept; on the the contrary, it was expressly understood, stipulated, and agreed that each of said associates should have and retain, both for the future and from the past, all his own clients, and should personally settle with his said associates for any services rendered for his clients, and their course has always been pursued under said association of Bonney, Fay and Griggs, and has been so clear, distinct, and open that all the persons doing business with them, or either of them, have well understood the same. Each of said associates has kept his own accounts, settled with his own clients, conducted his correspondence in his own individual name, with rare
42 exceptions of no special importance, though court papers have in general been signed for convenience of notice and attendance in said name of Bonney, Fay and Griggs since the same was adopted.

The fact that under said association the relation of every client was individual to some member thereof, and not jointly with them all unless so expressed and for special reasons made, was well known and understood by all of the persons named in said bill, with whom any business was transacted at said office of Bonney, Fay and Griggs after their said association was formed.

That in the year 1864 said Thomas T. Remick came to Chicago and employed said Fay as his general attorney, and soon thereafter as his general business agent at Chicago, and that as such attorney and agent said Fay had general charge of the litigation and court business hereinafter mentioned in connection with this respondent, as hereinafter set forth, and also had exclusive charge, in the absence of said Remick, of all matters on trial of counsel and court business, including the sale of lands, the collection of moneys, the payment of taxes, expenses, and the like at said county of Cook.

43 That upon the decease of said Thomas T. Remick, as mentioned in said bill, and the appointment of said Benjamin F. Remick his executor, said Fay became the general attorney and business agent of said Benjamin at said Chicago, and has continued to act in his separate and individual capacity as the attorney and business agent of said Benjamin to the present time, substantially as said Fay had before the decease of said Thomas acted for him.

That after said Thomas T. Remick had employed said J. Edwards Fay as aforesaid, it was deemed necessary or expedient by them that an associate counsel should be employed to assist said Fay in the difficult

and intricate matters of litigation then about to be undertaken, and thereup' the said J. Edwards Fay and Thomas T. Remick, having selected and agreed upon this respondent as their preference for such associate counsel, came together to the office of this respondent and employed him as counsel to said Fay for said Remick for the litigation then pending and expected thereafter to arise in said Cook County,
44 and it was then distinctly understood that this respondent's duties as such counsel would be, as they afterwards in fact were, confined to the giving of counsel when called on by said Fay or said Remick, and the chief charge and conduct of the business before the courts, said Fay acting at all times as the managing attorney therein.

That the relation thus established was not changed when said Fay, under said name of Bonney, Fay and Griggs, came to occupy office-rooms with this respondent and said Griggs, but continued until the death of said Thomas, who during the whole time remained primarily the client of said Fay, and in a secondary way the client of this respondent.

That said Fay always had the exclusive charge of the papers relating to the matters in controversy, and kept the same in his separate safe or vault, to which this respondent had no access and over which he had no control. This respondent made no collections of money, and never transferred, disposed of, or held any promissory notes or securities belonging to or growing out of the matters mentioned in said bill,
45 nor did this respondent ever participate therein with said Fay, nor consent to and advise any such transfer or disposition as is charged in said bill, nor did this respondent have anything to do with the making or taking of any such note and mortgage for fifty thousand dollars as are mentioned in said bill, no' does this respondent know, otherwise than on information, that there were or are any such notes for thirty-nine thousand two hundred and fifty dollars, or any such note and mortgage for fifty thousand dollars as are mentioned in said bill, nor were such notes, or any others of the like origin and character, ever in the possession or control of this respondent, or, so far as he knows or believes, in that of said Charles W. Griggs, but the sole and exclusive custody, control, and disposition of any such notes has been, so far as said Bonney, Fay and Griggs are concerned, by said J. Edwards Fay only.

That said Smith has several times, both during the lifetime of said Thomas and during the executorship of said Benjamin, visited the office of said Bonney, Fay and Griggs to consult with said Fay, and that
46 from such visits and what he saw and heard during the same, and from the correspondence had by him with said Fay about the business of said Thomas, and from other sources of said Smith well knew that all the matters whereof complaint is made in said bill were exclusively in the individual charge of said Fay, and that neither this respondent or said Griggs was any wise concerned in the same.

That this respondent never received any money from or on account of the business mentioned in said bill, save such sums on his individual account as he received from said Thomas, or from said Fay on the direction of said Thomas, excepting in one instance where, in the absence from Chicago of said Fay, this respondent received and disbursed a sum for taxes. And, at the time of the death of said Thomas, there was due and unpaid from him to this respondent a considerable sum of money on account of fees which said Thomas had provided for the payment of out of funds to be thereafter received by said Fay, and which sum has not to this day been fully paid to this respondent, although he has

47 often urged the payment thereof. This respondent mentions this fact to show how wholly beyond his control have been the money and securities involved in said bill.

That when the litigation above referred to, and which lasted for many years and involved an extraordinary amount of care and labor, was ended, the titles to the lands from which the assets in controversy are supposed to have been derived were vested, as this respondent was informed and believes, in said Job R. Remick, and were by the concurrence of him and said Thomas sold and conveyed, and the proceeds of such sales taken by said Thomas, and said J. Edwards Fay made trustee in the securities given by the purchasers of said lands for the unpaid part of the purchase-money, and said securities made payable to said Thomas, and that the subsequent doings of said Fay in the premises were rather in his capacity of business agent and trustee than in the capacity of an attorney at law in that behalf.

This respondent also says that he never received, claimed, or was entitled to any compensation for or on account of the services of
48 said Fay in or about the matters mentioned in said bill, but that all the compensation ever received, claimed, or had by this respondent in or about the matters aforesaid was for his own individual services in that behalf, and that this respondent had no interest whatever in the sales of said lands, or the collection or disbursement of the proceeds thereof, and never received or claimed any compensation or profit therefrom, nor had any right so to do, nor, so far as this respondent knows or believes, did said Griggs ever receive, claim, or have any right to any such compensation, those matters being wholly out of the charge and control of said Griggs and this respondent.

That when said titles were so vested in said Job and the business incidental thereto completed, the principal employment of this respondent terminated, but he still remained the counsel of said Thomas, and advised him as called on till the time of his deceased. But this respondent is informed and believes that said Smith was the attor-
49 ney both of said Job and said Thomas in said Pickaway County, where said lands were sold and conveyed, the securities therefor taken in manner aforesaid, and has continued to act as such attorney, and since the death of said Thomas as the attorney of said Benjamin in manner above set forth.

That this respondent has no recollection of ever having seen said Remick Houston, and he denies that he ever occupied any position of accountability to the estate of said Remick Huston or the estate of said Andrew Huston, whatever that may be, and he denies that he ever consented to act as the attorney or legal adviser of said Job R. Remick and said Palmer C. Smith, or either of them, and he denies that he ever acted as the attorney or legal adviser of said Benjamin at any time during the period of his executorship, but says that he expressly declined so to do. Said Smith and said Benjamin have occasionally been in this respondent's room, when at Chicago, on business with said Fay, and have a few times consulted about some matter in the presence of this respondent, but neither of
50 them ever assumed toward this respondent the relation of a client, nor did this respondent ever imagine till the filing of said bill that said complainants, or either of them, could ever pretend that such a relation existed.

That if the relation of this respondent to the parties and interests mentioned in said bill has ever been spoken or written of in any other manner or as of any other or different character than above set forth, such

speaking or writing has been casual or inadvertant, and is to be understood and construed according to the facts herein above stated and set forth. This respondent holds said complaints to be utter strangers to the relations heretofore existing between this respondent and said Thomas and said Fay, and denies that there is or can be any ground whatever upon which this respondent can be held accountable to said complaint as is charged in said bill of complaint.

And now having fully answered, this respondent prays to be hence dismissed, with his reasonable costs in this behalf most grieviously sustained.

CHARLES C. BONNEY.

LYMAN M. PAINE,
Solicitor.

51 See affidavit appended to like answer of this respondent in case No. 60748 in this court.

In the superior court of Cook County. In chancery.

STATE OF ILLINOIS,
County of Cook, ss:

PALMER C. SMITH, JOB R. REMICK, administrators de bonis non with the will annexed of Remick Huston, complainants,
vs.
CHARLES C. BONNEY, J. EDWARDS FAY, Charles W. Griggs, Benjamin F. Remick, Benjamin F. Remick, executor of Thomas T. Remick, deceased, James C. Ayer, Frederick Ayer, Albert G. Cook, Joel D. Harvey, and Henry H. Porter, William H. Ferry, and James B. Goodman, trustees of the West Chicago Land Company, George C. Campbell, Anthony McElroy, Edward L. Davidson, Charles B. McElroy, and John J. McElroy, defendants.

The answer of Charles W. Griggs, one of the said defendants, to the bill of complaint of the said complainants.

This respondent, saving all exceptions to the manifest insufficiencies of said bill of complaint, for answer thereto says, that he denies
52 that he was ever the partner of or jointly interested with said Charles C. Bonney and J. Edwards Fay, in any of the matters, transactions or business mentioned in the said bill of complaint, and this respondent also denies that he was ever, either separately or in connection with said Bonney Fay, the attorney, agent, or counsel of said estate of Andrew Huston and Remick Huston, or either of them, or of the various representatives of said estate, except in one instance, when in the absence from Chicago of said Fay this respondent closed a real-estate sale for Thomas T. Remick which had theretofore been made, wherein this respondent delivered the conveyances and collected the ash portion of the purchase price and received securities for the balance, and immediately thereupon remitted to said Thomas said cash and delivered over said securities.

And this respondent says, that except in said instance he has never

had and has not now in his possession, custody or charge nor anywise under his control any money or securities belonging to said estate or either of them to the representation thereof. That this respond-
53 ant has had a nominal business connection with said Bonney and Fay by which court business was transacted under the name of Bonney, Fay and Griggs, but this connection was not a partnership, as was well known by said complain'ts and by the representatives of said estate, as this respondent is informed and believes.

This respondent says he has never had any control over or management of any business connected with said estate or their representatives, nor has he been consulted therein; that he has never received nor been entitled to any profits resulting therefrom, and he ought not to be subject to any liabilities, if any there be, connected therewith.

This respondent says he has no knowledge, nor until the filing of said bill did he have any information, of the alliged transaction with said B. F. Remick and said J. C. Ayer and Co., nor *this* this respondent anywise liable in respect thereof.

And now, having fully answered, this respondent prays to be hence dismissed with his costs.

CHARLES W. GRIGGS.

LYMAN M. PAINE,
Solicitor.

54 STATE OF ILLINOIS,
Cook County:

On this 29th day of February, A. D. 1876, before me, a notary public in and for said county, in the State aforesaid, personally came Charles W. Griggs, and made oath that he has read the foregoing answers by him subscribed and knows the contents thereof, and the same is true of his own personal knowledge, except as to the matter' therein stated on information and belief, and as to these matters he believes it to be true. Witness my hand notarial seal.

[SEAL.] LYMAN M. PAINE, *N. P.*

And afterwards, to wit, on the seventh day of March, in the year last aforesaid, Joel D. Harvey et al., by Lawrence, Campbell and Lawrence, their solicitors, filed in said clerk's office their certain appearance in writing, which is in the words and figures following, to wit:

55 In the superior court. Chancery.

STATE OF ILLINOIS,
Cook County, ss:

PALMER C. SMITH ET AL. } 3519.
vs.
C. C. BONNEY ET AL. }

We hereby enter the appearance of Joel D. Harvey and Henry H. Porter, William H. Ferry and James B. Goodman, trustees for the West Chicago Land Company, and George C. Campbell.

LAWRENCE, CAMPBELL AND LAWRENCE,
Sol's for said Def'ts.

And thereupon, to wit, on the day and year last aforesaid, the same being one of the days of the March term of said court, the following

among other proceedings were had in said court and entered of record, to wit:

P. C. SMITH ET AL.
vs.
CHARLES C. BONNEY ET AL. } Bill. 3519, 60746.

This day came into open court Mess'rs Lawrence, Campbell and Lawrence, and enter their appearance as solicitors of record for the defendants Joel D. Harvey, James B. Goodman, George C. Campbell,
56 Henry H. Porter, and William H. Ferry, and on their motion it is ordered by the court that the time for said defendants to plead, answer, or demur the bill of complaint filed in this cause be and the same is hereby extended until the twentieth day of March instant.

And afterwards, to wit, on the twenty-ninth day of March, in the year last aforesaid, said complainants, by their solicitors aforesaid, filed in said clerk's office their certain replication, which is in the words and figures following, to wit:

In the superior court of Cook County, March term, A. D. 1876.

STATE OF ILLINOIS,
Cook County, ss:

PALMER C. SMITH AND JOB R. REMICK, ADMINISTRATORS de bonis non with will annexed of Remick Huston, deceased,
vs.
CHARLES C. BONNEY, J. EDWARDS FAY, Charles W. Griggs, Benjamin F. Remick, Benjamin F. Remick, executor of Thomas T. Remick, deceased, James C. Ayer, Frederick Ayer, Albert G. Cook, and Joel D. Harvey.

The replication of Palmer C. Smith and Job R. Remick, administrators de bonis non with will annexed of Remick Huston, deceased, complainants to the answers of Charles C. Bonney and Charles W. Griggs.

57 These replicants, saving and reserving to themselves all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendant, for replication thereunto, saith that they do and will aver, maintain and prove said bill to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendants are very uncertain, evasive, and insufficient in the law to be replied unto by the repliant; without this, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto confessed or avoided, transversed or denied, is true, all which matters and things the said repliants are ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by their said bill have already prayed.

MILLER AND FROST,
Solicitor' for Complainants.

And afterwards, to wit, on the fifth day of April, in the year
58 last aforesaid, James C. Ayer et al., defendants, filed in said clerk's office their certain answers, which are in the words and figures following, to wit:

In the supreme court of Cook County. Term A. D. 1876. In chancery.

STATE OF ILLINOIS,
Cook County, ss:

PALMER C. SMITH AND JOB R. REMICK, ADMINISTRATORS, *and* etc.,
vs.
CHARLES C. BONNEY, J. EDWARDS FAY, Charles W. Griggs, Benjamin F. Remick—Benjamin F. Remick, executor of Thomas T. Remick, deceased—James C. Ayer, Frederick Ayer, Albert G. Cook, Joel D. Harvey, and Henry H. Porter, William H. Ferry, and James B. Goodman, trustees of the West Chicago Land Company; George C. Campbell, Anthony McElroy, Edward L. Davidson, Charles B. McElroy, and John J. McElroy.

The answer of Benjamin F. Remick, one of the said defendants, for himself and as executor of the will of Thomas T. Remick, deceased, to the bill of complaint of the said complainants.

This defendant now, and at all times hereafter, saving and reserving unto himself all benefit and advantage of exception which can or
50 may be had to the many errors, uncertainties, and other imperfections in the said bill contained, comes and denies that the said complainants have presented an' such case as can or ought to be answered unto by this defendant, and he prays the same objection as could or might have been made by him, demurrer to the said bill, yet for answer thereunto he says:

That he denies that the said complainants are administrators de bonis non, with the will annexed, of Remick Huston, deceased, in the State of Illinois; that he admits that the said complainants may be such administrators in the State of Ohio, but that this respondent denies that thereby they have any right whatever to have or maintain this suit.

That he admits that said Remick Huston died in Pickaway County, in the State of Ohio, at about the time alleged in said bill; that he left a last will and testament, but that this respondent does not know, of his own knowledge, and therefore cannot state, whether the alleged copy of said will to said bill of complaint attached is a true copy thereof or not.

60 Defendant, further answering, says that he denies that said Thomas T. Remick, in his lifetime, was, so far as defendant knows or believes, the executor of the said will of said Remick Huston in the State of Illinois, but admits, on information and belief, that said Thomas T. Remick was such executor in the State of Ohio, and that he died in the said county of Pickaway, and State of Ohio, at about the time in said bill alleged, leaving a last will and testament, and says that this defendants was duly appointed by the probate court of said county of Pickaway the executor of the said will, and that letters testamentary

were duly issued to him accordingly on or about the fifteenth day of August, A. D. 1873, a copy of which said letters testamentary this respondent insists ought to have been annexed by said complainants to their said bill.

Defendant, further answering, says that he denies, on information and belief, that said Remick Huston ever had any title of record to the said premises mentioned and described in said bill of complaint, and says that whether the said Remick Huston, in his lifetime, ever
61 claimed any title thereto or interest therein this respondent is ignorant, except that this respondent states that it was common report in the family of said Remick Huston that the said Remick Huston had some interest in the said premises as the *ad*visee of his father, Andrew Huston, deceased, subject to the administration of the estate of said Andrew Huston, and the payment of his debts.

Defendant, further answering, denies, on information and belief, that said Thomas T. Remick was ever in any manner the administrator or executor of either the said Andrew Houston or the said Remick Huston in the State of Illinois, and says that he was at all times of his life a non-resident of the said State of Illinois, and was, as this respondent is advised, disqualified from being such executor or administrator.

This defendant further alleges, on his information and belief, that one Julius Rosenthal was the administrator de bonis non, with the will annexed, of the estate of said Andrew Huston, in the State of Illinois, and that there was never any administration of any estate of the said
62 Remick Huston in the State of Illinois, and this respondent denies, on information and belief, that the said Remick Huston ever had or left any estate in the said State of Illinois to be administered upon, as will more fully appear from the statements and facts hereinafter contained.

This defendant, further answering, denies, on information and belief, that the said Remick Huston, in his lifetime, ever employed the said Charles C. Bonney, or had any relations with him whatsoever; and also denies, on information and belief, that any such partnership as that of Bonney Fay, as alleged in said bill, ever existed.

This defendant says, on information and belief, that some relation of attorney and client may have at some time existed between said Remick Huston in his lifetime and said Fay, but to what extent this respondent is ignorant and cannot further state, but denies, on information and belief, that said Thomas T. Remick ever employed said Bonney and said Fay, or either of them, as attorneys for the estate of said Remick Huston, as is charged in said bill.

63 This defendant, further answering, says that, as he is informed and believes, the said Thomas T. Remick, some time in the year 1864 came to Chicago, in the said State of Illinois (he being one of the devisees of said Remick Huston, who was the sole devisee of his father, the said Andrew Huston, and would take his estate after the payment of his debts), and employed the said Fay, among other things, to ascertain the condition of the premises mentioned in said bill of complaint; that said Thomas T. found the estate (including the premises in said bill mentioned, supposed to belong to said Andrew Huston in his lifetime) so incumbered by claims against his estate and by tax titles that the entire value of the whole estate was not equal to said claims and tax titles, and that in due course of administration there was, or would be, nothing for either the estate of said Andrew Huston or of said Remick Huston; that proceedings in court in said Cook County were then pending for a sale of the said premises to pay debts of said Andrew

Huston, who died indebted to a very large amount, and that tax
64 sale at sales of the said premises had passed beyond the time allowed by law for redemption therefrom, and that said Thomas T., ascertaining the above facts, and that nothing could be done without the risk, investment, and expenditure of many thousands of dollars of his own money, decided to return to his home in Ohio, and to take no further action in the said matters or in regard to the said lands and estate; that under the advice and suggestion of said Fay said Thomas T. finally changed his determination, and decided to risk his money in the hope of saving something, and to resist the proceedings of Julius Rosenthal, the administrator and of said estate in said State of Illinois, then pending, to sell said premises with other lands to pay the debts of said Andrew Houston.

That the motive of said Thomas T. in so doing was to provide, after the him repayment to himself of all the monies which might be invested by therein, with all expenses and costs incurred in and about the said matters, according to his discretion, and of his bounty, for the persons mentioned as legatees in the will of said Remick Huston; that he thereupon
65 employed and retained said Fay as his general attorney for himself in and about the said litigation, and that he (said Thomas T.) also afterwards employed said Fay as his general business agent concerning the said lands and such other matters and things as might be connected with the same, or as he might otherwise have in said State of Illinois; that he also retained and employed said Charles C. Bonney as associate counsel to assist said Fay in the litigation then pending (in which he, the said Thomas T., was one of the defendants), and such as should and did thereafter arise in which he, said Thomas T. Remick, should be interested in the said State of Illinois, in all of which the said Charles C. Bonney and the said J. Edwards Fay respectively acted for the said Thomas T. Remick, and under his directions only, except so far as such action incidentally and by his direction extended to the other defendants in any of the said litigation and proceedings.

And this defendant, further answering, says, as he is informed and believes, that said Thomas T. Remick never in his lifetime em-
66 ployed the said Charles W. Griggs in and about any of the said matters in any way whatever; and says further that he has never so employed him since the death of the said Thomas T. Remick, and that he was not sufficiently acquainted with him to know him by sight ever until since the time of the filing of this bill of complaint of the said complainant in this cause; and that, as he is informed and believes, the said employment of said Bonney and of said Fay by said Thomas T. Remick, in his lifetime, was in all respects a separate and not a joint employment and service.

And, further answering, says that this respondent has never employed the said Charles C. Bonney in any way about the said matters, or anyway whatever.

And this defendant, further answering, says on information and belief that the said Thomas T. Remick, in the prosecution of his intention as aforesaid to try and save something out of said lands, was obliged to invest a large amount of his own money in the purchase of some
67 tax titles on the said lands and in redemptions from tax sales and in the purchase of claims against the said estate of Andrew Huston, and that he expended therein, as this defendant is informed and believes, upwards of twenty-five thousand dollars thereof, but exactly how much this defendant does not know and cannot state; that such proceedings were also had that the said lands in said bill mentioned were

sold by said Julius Rosenthal, as administrator, and of Andrew Huston as aforesaid, and under a decree of the county court of said county of Cook, and also under a decree of the circuit court of the United States in and for the northern district of Illinois, the first-mentioned sale being to pay debts against the estate of said Andrew Huston, and the said last-mentioned sale being to satisfy the claims of one Anna Marsh against the estate of said Remick Huston, both of which sales were fair, open public sales, free to all competition, and under which the said land, or whatsoever interest the estates of said Andrew Huston and the said Remick Huston respectively had therein was extinguished
68 and passed to said Job R. Remick for the benefit of said Thomas T. Remick, who paid for the same at said sales, as this defendant is informed and believes, with his own funds, but caused the same to be so purchased in the name of said Job R. Remick merely for any contingent or apparent benefit which might be derived to the title thereby.

And this defendant, further answering, says that as he is informed and believes that said Thomas T. Remick caused a paper to be drawn expressive of the fact that said Job R. Remick held the said title entirely subject to the direction of the said Thomas T. Remick as to subsequent sales of the said lands, which instrument was also expressive of the intention of said Thomas T. that the proceeds of said lands should be distributed after the amount necessary to pay to him all his outlay, costs, charges, and expenses, with interest thereon, in the payment of any debts of said Andrew Huston and said Remick Huston then remaining unpaid, and then divided among the persons mentioned as legatees in the will of Remick Huston.

And this defendant says that said Thomas T. Remick, as he
69 believes, did not in any manner, in his lifetime, recognize that any of the said debts, or any claim of any of the said persons, was a legal obligation upon him, but that he was disposed, of his bounty and for the honor of the said deceased persons, to pay the said debts and to provide for the said persons who had been named as legatees with him in the said will of Remick Huston.

And this defendant further says that it has lately come to his knowledge that the said paper was never executed by the said Job R. Remick, and that it is the belief of this respondent, and he so charges the facts to be, that the said Thomas T. Remick always regarding the said and all the money and proceeds thereof as the fruit and product of his own personal efforts and investment of his own funds, and being fully determined so to keep and hold the said lands and money and proceeds, that none of the creditors, devisees, or heirs of either the said Andrew Huston or the said Remick Huston might or could have or maintain any claim thereto, either at law or in equity, deliberately after
70 the effect of the execution of the said instrument of writing had been explained to him by counsel, withheld the same from execution by said Job R. Remick, to the end that said Job R. Remick have the said lands, or such titles as he had hereto, subject to the sole will and pleasure, order, and direction of him, the said Thomas T. Remick, whereby all the said lands held by said Job R. Remick, as aforesaid, and the *and the* proceeds thereof belonged to the estate of the said Thomas T. Remick, and now belong to this defendant, as the executor of the said Thomas T. Remick, to *de* disposed of according to the will of said Thomas T., and the personal discretion thereby vested in this respondent, which discretion this respondent charges to be the reason why the said lands held by said Job R., as aforesaid, or the proceeds thereof, or of any of them which had been so held by him, were

not particularly mentioned and specified in said will of said Thomas T., and this defendant charges and will insist that the said Job R. Remick is accountable to this respondent for any of the said lands re-
71 maining unsold at the time of said Thomas T. Remick' death, and for any proceeds of any of the said lands title to which was or is so held by said Job, if any such proceeds have or shall come to his (said Job) possession or control, or if he has or shall dispose of or convey any of the said lands without the direction of this respondent.

And this defendant further answering says, on information and belief, that pursuant to the manner in which the said lands and other property was held and owned by the said Thomas T. Remick, but the apparent title to which was in said Job R. Remick, the said Thomas T. Remick at various times contracted to sell and did sell of the said lands. And that the said Job R. always executed deeds as said Thomas T. directed, and that said Thomas T. Remick at all times received and disposed of the proceeds of the sales so far as the same were paid, and that no part thereof ever passed to the hands of said Job R., or was in any manner disposed of by him; that a sale was made by said Thomas T. (in his own right and as of his own land) to said Joel D. Harvey at about the
72 time and for the price named in said bill; that the first payment was made to said Thomas T. Remick, and that notes were executed for the balance of the purchase-money payable to the order of said Thomas T. Remick, substantially as alleged in said bill, secured by trust-deed to said Fay, as trustee, and that said Job R. joined with said Thomas T. in the said conveyance of said premises to said Harvey, the purchaser, on the request of said Thomas T. Remick that he would do so, and with the understanding and consent that the proceeds of said sale should go to said Thomas T. Remick, to be disposed of by him as he saw fit.

The defendant further answering says that after the death of said Thomas T. Remick and the appointment of this respondent as executor of his estate, as aforesaid, he continued the employment of said Fay as his attorney and business agent as to matters belonging to the estate of the said Thomas T. Remick in the said State of Illinois, and that as such attorney and agent said Fay from time to time made col-
73 lections of moneys belonging, as this respondent avers, to the estate of said Thomas T. Remick upon the said notes, which were payable to the order of said Thomas T. Remick, as aforesaid, and that said Fay, by the direction, sanction, and assent of this defendant, as said executor of Thomas T. Remick, paid taxes on lands titles to which was in said Thomas T. Remick, and on the land title to which was in the said Job R. Remick, as aforesaid, and paid other debts against the estate of said Thomas T. Remick out of money so collected or received by him as such business agent, in like manner as he had done under the direction of said Thomas T. Remick in his lifetime.

And this respondent, further answering, says that during the lifetime of said Thomas T. Remick he purchased an interest in a manufacturing business situated and carried on at Canton, in the State of Ohio, and which was a manufacturing of printing presses, and that he became a partner in the firm running and carrying on the said business; that thereby he became the owner of the one-third interest in certain
74 patent rights under which said presses were manufactured, and which rights were supposed to be of very considerable value, and of certain real and personal property belonging to said firm; that the said firm was somewhat indebted at the time of the death of said Thomas T., and that he, well knowing that the said business would re-

quire further aid and assistance from his estate, provided by his will to the effect that this respondent, as his executor, should continue the said interest of said Thomas T. in the said business, and manage and care for the same in such manner, answer for such time as this respondent in his discretion should see fit; the said Thomas T., intending when he made the purchase of the said interest in the said business to carry the same on, and develop it with the purpose of finally disposing of it in the exercise of his purposed bounty concerning the said matters in such manner and to such person or persons as he thought proper.

75 And this respondent says that owing to the financial panic of the year 1873, and the so new but experimental character of the said business, the debts of said firm, which accrued in the lifetime of the said Thomas T., with additions made thereto afterwards in and about the said business, made it necessary that this respondent should, from time to time, as such executors, furnish money from the funds and securities belonging to the said estate of Thomas T. Remick, to protect and aid the said business.

This respondent further says that the said Palmer C. Smith was the attorney of said Thomas T. Remick in all matters relating to the matters in his hands and charge concerning the estate of said Andrew Huston and said Remick Huston, in the State of Ohio, as well as his own matters in the State of Ohio, in the lifetime of said Thomas T., and that after the death of said Thomas T. he became the attorney of this respondent, as the executor of said Thomas T., and as such attorney counseled and represented this respondent in court at the time

76 the application was made in the probate court, in the State of Ohio, to have the said will of said Thomas T. admitted to probate, and at the time of the appointment of this respondent as such executor, and in all matters which have from time to time come up in regard to said estate in said court, and in said Pickaway County, to this time, and that the said Smith has never yet withdrawn from such service, or in any way notified this respondent to this time that such relation was terminated (unless so far as this suit is such notice).

And respondent further says that said Smith, as such attorney, has from time to time paid to this respondent, as such executor, monies which he, Smith, received from said Fay, and which said Fay received upon matters and obligations payable to said Thomas T. Remick, and belonging to his estate, and which was paid to said Smith by said Fay, with the sanction, consent, and direction of said respondent, as such executor, to the amount of upwards of twenty thousand dollars, a large part of which this respondent used with the full knowledge thereof on the part of said Smith, and of respondent' intention so to do, in

77 the aid of the said business at Canton, and in payment of debts owing by the said firm.

And respondent further says, about the second day of March, A. D. 1874, this respondent, himself, purchased the interest held before that time by one Peter G. Tower in the said firm of which said Thomas T. Remick was a member at the time of his death as aforesaid, this respondent being at the time fully confident that, by so doing and giving his own personal aid and influence, as well as such aid as might be necessary as such executor as aforesaid, to it, the said business could be made successful, and the expectation which said Thomas T. had in his lifetime concerning the same would be realized, and that from and after that date the said business has been carried on in the firm-name of B. F. Remick and Co., and that the interest of the estate of said business was unchanged by this respondent's said purchase, and the said firm

was thereafter composed of Benjamin F. Remick, Benjamin F. Remick as executor of Thomas T. Remick, deceased, and Peter J. Classen.

78 And this respondent, further answering, says that he is informed and believes the said notes made by said Harvey at the time of the conveyance to him of the said premises in the said bill of complaint mentioned were not in fact delivered to said Thomas T. Remick or to said Fay, as is in said bill of complaint alleged, but were for a long time, to wit, until some time in the month of February, A. D. 1875, held in the custody of some third person until certain matters and things in regard to the title of the said premises were done to make the same satisfactory to the said West Chicago Land Company, and that in fact the said Fay never had any possession of the one of said notes which first became due by the terms thereof, that the other two of said notes were delivered to said Fay in the said month of February, A. D. 1875, at which time said Fay was the attorney and business agent at Chicago of this respondent as the executor of said Thomas T. Remick, as aforesaid.

79 And this respondent says that soon after the said Fay had received the said notes which this defendant charges and insists he in fact did as the agent of this respondent, and could do in no other way, this respondent requested said Fay to deliver the said notes to him, and the said Fay did thereupon, at some time in the said month of February, A. D. 1875, deliver one of the said notes to this respondent, as such executor, or to his order, and that afterwards, on or about the month of May, A. D. 1875, the said Fay, upon this respondent's express personal request and demand therefor, delivered the other of the said notes to this respondent as the executor of said Thomas T. Remick as aforesaid, as he as this defendants submits ought to have done.

And this defendant, further answering, says that at about that time very considerable amounts of indebtedness of the said manufacturing business in Canton, Ohio, had become due and payable, and although the said business was, as this defendant was informed by the managing partner and by all the persons engaged in the charge and conduct

80 of the said business, steadily improving, and then giving good promise of success, and finally of large profits, if well and discreetly managed, it was absolutely necessary to the carrying on of the said business, and to the protection of the estate of the said Thomas T. Remick, which estate was liable with the other partners of said firm for a great part, if not on the whole of said indebtedness, and especially necessary to the protection and continuance of the interest of the said estate in the said business, that further time should in some manner be obtained to the said firm and business in which to pay the said indebtedness, that the only way in which that could be done was by obtaining a loan or loans for a time, such that it or a great part of it could be paid out of the future expected profits of the said business.

And this respondent says that in pursuance thereof, this respondent, on behalf of his said firm, procured a loan of thirty-nine thousand two hundred and fifty dollars from Mess. J. C. Ayer and Co. (who are made defendants in this suit), of Lowell, in the State of Massachusetts, on or

81 about the 29th day of May, A. D. 1875, to become payable on the 15th of July, A. D. 1877, with interest at ten per cent. per annum, payable semi-annually, and that this respondent, as such executor of said Thomas P. Remick, deceased, as aforesaid, paid, endorsed the said note made by said Harvey, and which was by its original written terms payable on the 15th day of July, A. D. 1874, but the pay-

ment upon which had then been extended, as is hereinafter set forth, and transferred the same to said J. C. Ayer and Co., to be held and owned by them as security for the payment of the said loan to them.

And this respondent, further answering, says that on or about the day of , A. D. 187 , this respondent, as the executor of said Thomas T. Remick, as aforesaid, executed a paper in writing, whereby he agreed with the said Porter, Ferry, and Goodman, as trustees of the said West Chicago Land Company, who had assumed the payment of the said notes made by said Harvey and all of whom are mentioned in said bill of complaint of the said complainants and the amendments thereto, that the time of the payment of the said two notes might be extended for a period not exceeding two years from the time when
82 they were to become due by the original terms thereof, and that of the said premises might be released from the trust deed securing the same upon other notes, and security for the payment of said two notes made by said Harvey, which notes and securities so to be taken in case they were taken were to, and this defendant submits do, stand as security to the said J. C. Ayer & Co. for the payment of the said note of said Harvey in the case that they became entitled to have the said note made by said Harvey paid to them in the same manner as such notes and securities would have secured the payment of said Harvey note to this respondent if he had not transferred it to said J. C. Ayer and Co., as aforesaid.

And this respondent further says that, as he is informed and believes, the said Smith had prior thereto executed a similar paper, an alleged copy of which is stated to be attached to said bill, in which paper the said Smith alleged an interest in the said notes in the estate of said Remick Huston dec'd.

83 And this respondent charges and will insist that the said statement was wrongful and surreptitious on the part of said Smith and contrary to the facts in the case and the rights of this respondent and all other parties concerned in the said matters.

And this respondent further says, that at the time the loan hereinbefore mentioned was made by this respondent from the said J. C. Ayer and Co., it was fully and expressly agreed by this respondent that in case the south forty acres of the said land in said bill of complaint mentioned and described should be released, and notes for the sum of ninety-six thousand dollars should be furnished by the West Chicago Land Company all according to the assent of this respondent as expressed in said writing extending the payment of said Harvey notes as aforesaid to the said Fay, to be held as security for the payment of the said two notes made by said Harvey, a proper proportion of the said notes making up the said sum of $96,000 should be held as security to the said J. C. Ayer and Co. for the payment of the said note of said Harvey which was transferred by this respondent to them as aforesaid,
84 which this respondent states on his information and belief in the manner in which the one-half part of the said notes for the said $96,000 are now held, and this respondent says that the said J. C. Ayer and Co. are in good faith, and justly, as this respondent submits, entitled to the same accordingly.

And this respondent further answering says, that he admits the making of a note for fifty thousand dollars to said Fay in November last, and securing the same by a mortgage on certain lands in Ohio, which note was made to said Fay, as trustee, and was delivered to said Fay as such trustee to hold as security for various notes which are held by various persons, some of them notes made by this defendant indi-

vidually, and some of them notes made by this defendant's firm, a part of which said notes are held by said Fay, and that said Fay still holds the said note for fifty thousand dollars accordingly, but not in any manner to indemnify the said Bonney or the said Griggs for anything whatsoever.

And this respondent denies that the said firm of B. F. Remick
85 and Co. were insolvent at the time alleged in the said bill of complaint when the said respondent used the said securities as aforesaid, so far as this respondent then knew or believed, as this respondent fully believes and was confident that by so using the same as aforesaid it would result in the full and complete final success of the said business.

And this respondent, further answering, says that on or about the eight' day of February, A. D. 1876, and after the said P. C. Smith had been to the said county of Cook and State of Illinois, and had commenced this suit and others, he (said Smith) sent for this respondent, and while he (said Smith) was yet the counsel and legal adviser of this respondent as aforesaid, and without withdrawing from such service, advised this respondent, as this respondent believes in order that he (said Smith) might have an advantage over this defendant's in the said suits, to sign a paper purporting to be a resignation of the executorship of the said will of Thomas T. Remick, deceased, and that Smith has
86 since, as this respondent is informed, procured the appointment of some other person to be the administrator de bonis non, with the will annexed, of the said estate of said Thomas T. Remick, dec'd, in the said county of Pickaway and State of Ohio.

And this respondent charges and will insist that his said signature to said paper was wrongfully procured by said Smith, and is a fraud and wrong to this respondent, and that no other person can rightfully be appointed such administrator in the place and stead of this respondent under the terms and conditions of said will and the discretion thereby vested in this respondent, and that he shall insist on his right to be restored to his office as such executor, and to have the said alleged administrator removed.

And now having fully answered, this defendant prays to be hence dismissed with his costs in his behalf most wrongfully sustained.

B. F. REMICK.

T. S. FERGUSON,
Sol'r of Def't Benjamin F. Remick.

87 STATE OF ILLINOIS,
County of Cook, ss:

Benjamin F. Remick, being first duly sworn, deposed and says that he has read and heard read the foregoing answer by him subscribed, and knows the contents thereof, and that the same is true of his own knowledge, except as to matters which are therein stated to be on his information and belief, and as to those matters he believes them to be true.

B. F. REMICK.

Subscribed and sworn to before me this 26th day of February, A. D. 1876.

[SEAL.] THOMAS S. FERGUSON, *N. P.*

Superior Court of Cook County. In chancery.

STATE OF ILLINOIS,
County of Cook, ss:
PALMER C. SMITH AND JOB R. REMICK, administrators, etc.,
v.
CHARLES C. BONNEY ET AL.

The joint and several answers of James C. Ayer, Frederick Ayer and Albert G. Cook, three of the defendants to the bill of complaint of Palmer C. Smith and Job R. Remick, administrators de bonis non, with the will annexed, of Remick Huston, deceased.

88 These defendants now and at all times reserving to themselves all manner of benefit and advantage of exception of the many errors and insufficiencies of said bill of complaint, for answer thereto, or to so much thereof as they are advisedit is material or necessary for them to make answer unto, say that they have no knowledge or information except such as they have derived from said bill, and that therefore they neither admit nor deny that the said Remick Huston departed this life in the month of February, 1864, in Pickaway County, Ohio, leaving a will of which the complaint Exhibit A purports to be a copy, or that letters testamentary were issued by the probate court of Pickaway County aforesaid to Thomas T. Remick as the executor of the estate of said Remick Huston, or that the said Thomas T. Remick duly qualified and entered upon his office as executor of said estate, or that after the death of said Thomas T. Remick the said complainants were appointed by the probate court of said Pickaway County administrators de bonis non, with the will annexed, of the estate of said Remick Huston,
89 or that they have duly qualified and entered upon the duties of their said office as such administrators, or that the said Remick Huston was, at the time of his death, the owner in fee of the real estate described in said bill, to wit, the west half of the southwest quarter of section ten (10) in township thirty-nine, range thirteen east of the third principal meridian, in the county of Cook and State of Illinois, or that he had for many years employed said Charles C. Bonney and J. Edwards Fay as his attorneys at law respecting said real estate, or that said Bonney and Fay knew of the death of said Huston, or that he was the owner of said land at the time of his decease, or that the said Thomas T. Remick employed said Bonney and Fay as the attorneys of the estate of said Remick Huston in respect to said lands, or that while they were acting as attorneys for said estate said land was sold at a judicial sale, and the apparent legal title thereto was vested in the complainant, Job R. Remick, in trust for the estate of said Remick Huston, or that it was known to said Bonney and Fay that said
90 Job R. Remick had no beneficial interest in said lands, or that the beneficial interest in said land belonged to said estate of said Huston, or that the said firm of Bonney, Fay and Griggs were ever the legal advisers of said estate of Remick Huston, and they call upon the complainants for proof of their allegations in relation to the foregoing matters.

And these defendants admit, upon information and belief, that on or about the 15th day of July, 1872, the said Job R. Remick and the said Thomas T. Remick executed and delivered their deed of conveyance, whereby, in consideration of the sum of $157,000, they granted and

conveyed the said real estate in fee to one Joel D. Harvey, which deed was duly recorded in the office of the recorder of deeds of said Cook County, and that upon the delivery of said deed the said Harvey paid a part of said consideration money, to wit, $39,250 thereof, to the said Thomas T. Remick in cash, and for the balance thereof he executed and delivered his three certain promissory notes, dated the 15th day of July, 1872, for the sum of $39,250 each, payable respectively in
91 one, two, and three years from date to the order of said Thomas T. Remick, with interest at eight per cent. per annum, and that to secure the payment of said notes, and each of them, the said Joel D. Harvey executed and delivered his certain deed of trust of said date, whereby he conveyed said real estate and premises unto the said J. Edwards Fay as trustee for the purpose aforesaid, which said deed of trust was duly recorded in the office of said recorder of deeds of Cook County.

But they deny, upon like information and belief, that in joining with the said Job R. Remick in the execution of said deed to said Harvey, and in receiving said cash payment and said notes, the said Thomas T. Remick acted as the executor of the said estate of Remick Huston as alleged in said bill, but on the contrary they aver, upon like information and belief, that in so doing the said Thomas T. Remick acted solely and entirely upon his own individual account and behalf, and in his own interest, and that although the legal title to said real estate was vested in the said Job R. Remick, he was a mere naked trustee therefor
92 for the use and benefit of said Thomas T. Remick, who was the equitable and beneficial owner thereof.

And they deny, upon like information and belief, that the said notes ever became or were the property of the said estate of Remick Huston, or that said estate had any interest, legal or equitable, therein; but, on the contrary, they aver, and upon like information and belief, that said notes were in his lifetime the property of the said Thomas T. Remick.

And, further answering, they aver that they have no knowledge or information, except such as they have derived from said bill, as to whether or not the said complainants refused to allow the application of funds belonging to the estate of Remick Huston for the use and benefit of the said firm of B. F. Remick and Co., and therefore they neither admit nor deny the same, but call for proof thereof.

93 And they further say that until the filing of said bill they never heard of said Remick Huston or his said estate, and knew nothing thereof, and know nothing in regard to any connection of the said Bonney, Fay and Griggs, or either of them, with the said Remick Huston or his estate, or with said complainants, and they now know nothing thereof except as they are informed by said bill, and therefore they neither admit nor deny any of the allegations of said bill in regard thereto, including all of said allegations, without here specifically naming them, but they call for proof of each and every one of them.

And, further answering, they aver that in the month of May, A. D. 1875, one Josiah H. Reed, of the city of New York, who was engaged in the business of negotiating loans at the East for parties residing in Chicago and other places, applied to these defendants for a loan to the said firm of B. F. Remick and Co., then strangers to these defendants, and said application was reduced to writing, and was in the following words and figures, to wit:

94 LOWELL, MASS'TS, *May* 26, '75.

Mess'rs J. C. Ayer and Co.:

Referring to some conversation had recently in New York with you, Doct. J. C. Ayer, and to correspondence had with you on the subject of a loan to Remick & Co., of Canton, Ohio, of thirty-nine thousand two hundred and fifty dollars ($39,250) on a certain piece of property in the State of Illinois, I now formally and expheitly apply to you for a loan of the above-mentioned amount on the terms and conditions as follows, viz: The note of the said Remick and Co., made in the city of Chicago, dated May, 1875 (the exact day not being known to me), for thirty-nine thousand two hundred and fifty ($39,250) dollars, payable to you and maturing on or about July 15th, 1877, and drawing interest from date at the rate of ten (10) per cent. per annum, payable semi-annually.

The note above mentioned shall have assigned to you as collateral to it the note of Joel D. Harvey, of the city of Chicago, Ill's, for a like amount (the date of which I am not informed), maturing also July 15th, 1877,

95 which note is secured to one Remick by a trust deed of a certain tract of land containing 58½ acres, more or less, described as follows, viz: West half (½) of the southwest quarter (¼) of section 10, town. thirty-nine (39) north, range No. thirteen (39) east, third (3d) principal meridian, near the car-shops of the N. W. R. R. Co., and near the city limits of Chicago.

The above-mentioned note of Harvey to Remick, and trust deed, will be assigned to you so as to make the security available to you as a first lien upon said property, and so that, in case of default in pay't of principal or interest, the said collat'l security may be as available to you as if it had been originally made to you.

It is understood the securities before mentioned shall be examined and approved by Judge W. C. Goudy, of Chicago. It is further understood that I apply to you for this loan at the request and by the written authority of Mess'rs Remick and Co., which authority shall be filed with yours.

Very respectfully,

JOSIAH H. REED.

And thereupon these defendants agreed to make said loan if

96 the security offered should prove satisfactory to them, and that thereupon they caused the title to the said real estate to be examined by their attorneys in the city of Chicago, who procured said deed of trust to said Fay, executed by said Joel D. Harvey, to secure said notes of said Harvey to Thomas T. Remick for $39,250 each, to be a valid and first lien and encumbrance upon said real estate, and that their said attorneys further advised them that the said Benjamin F. Remick, as the executor said Thomas T. Remick, was fully authorized by the will of the said Thomas T. Remick, and had full power and authority, to assign and transfer said notes, and these defendants thereupon loaned and advanced to the said Benjamin F. Remick and Co. the sum of thirty-nine thousand two hundred and fifty dollars on or about the 29th day of May, 1875, to be repaid to them by the said B. F. Remick and Co. on the 15th day of July, A. D. 1877, with interest at the rate of ten per cent. per annum, payable semi-annually, evidenced by the promissory

97 note of said B. F. Remick and Co. for said sum, payable to them as aforesaid; and to secure the repayment to them of said sum so loaned, and interest, the said B. F. Remick, as executor of Thomas T. Remick, endorsed, assigned, transferred, and delivered to them said note of Joel D. Harvey, so payable to the said Thomas T. Remick on

the 15th day of July, A. D. 1874, as collateral security for the repayment of said loan and interest as aforesaid, and they have ever since held, and now hold, the said note as such security, and they expressly deny that they had any notice that the said note did not belong to the estate of Thomas T. Remick, or that they are not bona fide holders thereof, but, on the contrary, they aver that they took the said note in good faith as innocent purchasers without notice of any adverse claim thereto by said estate of Remick Huston, said complainants, or any one, and they aver that prior to the asssignment of said note to them the time of payment thereof had been extended two years.

And they aver that the said Benjamin F. Remick, as executor of Thomas T. Remick, was the legal holder of said note and had full
98 power to assign and transfer the same, and that they are the legal and equitable holders and owners of said note free and clear of all claims thereto by said complainants.

And they further say that the notes mentioned in the amendment to said bill given for part of the purchase-money for parts of said real estate sold are held in good faith as collateral and additional security for the payment of said notes of Joel D. Harvey, held by the First National Bank of Westborough, Massachusetts.

And as to all other matters and things in said bill and amendment alleged, not herein sufficiently answered, confessed, denied or avoided, these defendants deny the same as fully as if specifically referred to and denied.

And now having fully answered the said bill, these defendants pray to be hence dismissed with their costs, etc.

JAMES C. AYER,
FREDERICK AYER,
ALBERT G. COOK,
By their solicitors GOUDY, CHANDLER AND SKINNER.

GOUDY, CHANDLER and SKINNER,
Sol. for said Def'ts.

99 And afterwards, to wit, on the twenty-fifth day of April, in the year last aforesaid, said complainants, by their solicitors aforesaid, filed in said clerk's office their certain replication and motion, which is in the words and figures following, to wit:

Superior court of Cook County, of the April term, A. D. 1876.

STATE OF ILLINOIS,
Cook County, ss :

PALMER C. SMITH AND JOB R. REMICK, administrators and etc., complain'ts,
vs.
CHARLES C. BONNEY, J. EDWARDS FAY, Charles W. Griggs, Benjamin F. Remick, Benjamin F. Remick, ex'r, and etc., James C. Ayer, Frederick Ayer, Joel D. Harvey, Henry H. Porter, W'm H. Ferry and James B. Goodman, trustees and etc., Geo. C. Campbell, Anthony McElroy, Edward L. Davidson, Charles B. McElroy, and John J. McElroy.

The replications of Palmer C. Smith and Job R. Remick, complainants, to the answers of James C. Ayer, Frederick Ayer, Albert G. Cook, Benjamin F. Remick, Benjamin F. Remick, executor of Thomas T. Remick, deceased.

These replicants, saving and reserving to themselves all and all

100 manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answers of the said defendants, for replication thereunto, saith that they do and will ever maintain and prove said bill to be true, certain, and sufficient in the law to be answered unto by the said defendants, and that the answers of the said defendants are very uncertain, evasive, and insufficient in the law to be replied unto by the repliants, without this, that any other matter or thing in the said answers contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true;, all which matters and things the said repliants are ready to aver, maintain, and prove, as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

MILLER AND FROST,
Solicitors for Complainants.

101 Superior court of Cook County, April term, A. D. 1876. In chancery.

STATE OF ILLINOIS,
Cook County, ss:

PALMER C. SMITH AND JOB R. REMICK, administrators de bonis non with will annexed of Remick Huston, deceased,
vs.
CHARLES C. BONNEY, J. EDWARDS FAY, Charles W. Griggs, Benjamin F. Remick, Benjamin F. Remick, dec'd, James C. Ayer, Frederick Ayer, Albert G. Cook, Joel D. Harvey, Henry H. Porter, William H. Ferry, James B. Goodman, trustees of the West Chicago Land Company, and George C. Campbell, Anthony McElroy, Edward L. Davidson, Charles B. McElroy, and John J. McElroy.

And now come the said complainants and move that said bill be dismissed as to said Benjamin F. Remick, executor of Thomas T. Remick, deceased, without prejudice.

MILLER AND FROST,
Complainants' Solicitors.

And afterwards, to wit, on the twenty-seventh day of April, in the year last aforesaid, said complainants, by their solicitors aforesaid, filed in said clerk's office their certain supplemental bill, which is in the words and figures following, to wit:

102 Superior court of Cook County. In chancery.

STATE OF ILLINOIS,
Cook County, ss:

To the honorable judge of the superior court of Cook County, in chancery sitting:

Humbly complaining therewith unto your honors, your orators, Palmer C. Smith and Job R. Remick, of the State of Ohio, administrators of the

estate of Remick Huston, deceased, with the will annexed, and Edward J. Van Meter, of said State, administrator de bonis non, with the will annexed of Thomas T. Remick, deceased, they, your orators, the said Palmer C. Smith and Job R. Remick, exhibited their original bill of complaint in this honorable court on or about the 3d day of Feb'ry, A. D. 1876, against Charles C. Bonney, J. Edwards Fay, and Charles W. Griggs, composing the firm of Bonney, Fay and Griggs, Benjamin F. Remick, and James C. Ayer, Frederick Ayer and Albert G. Cook, composing the firm of J. C. Ayer and Co., and Joel D. Harvey, and William C. Gondy and George Chandler, composing the firm of Gondy and Chandler, and that afterwards, and on or about the 14th day of February, A. D. 1876, exhibited in said cause their amended bill
103 of complaint against Henry H. Porter, William H. Ferry, and James B. Goodman, trustees of the West Chicago Land Company, and George C. Campbell, Anthony McElroy, Edward L. Davidson, Charles B. McElroy, and John J. McElroy, in which said bill of complaint, your said orators charged that the said Remick Huston departed this life in the month of February, A. D. 1864, at his then residence in Pickaway County, in the State of Ohio, leaving his last will and testament, a copy of which was thereto annexed; that said will was duly probated in said county of Pickaway, and the letters testamentary duly issued by the probate court of said county on or about February 12th, A. D. 1864, to Thomas T. Remick, the executor named in said will as the executor of said estate, and the said Thomas T. Remick duly qualified and entered upon his office as executor of said estate. That afterwards and on or about the 7th day of August, A. D. 1873, said Thomas T. Remick departed this life in said county of Pickaway, his then place of residence, leaving his last will and testament, which was duly
104 probated in said county, and letters testamentary upon his estate were duly issued by the probate court of said county to Benjamin F. Remick, as executor of his estate, on or about the day of August, A. D. 1873, and that the said Benjamin duly qualified and entered upon the duties of his office as such executors.

That on or about the 5th day of September, A. D. 1873, your said orators were duly appointed by the probate court of said county of Pickaway as administrators de bonis non of the estate of said Remick Huston, a copy of which letters were annexed to said bill, and that your said orators were duly qualified and entered upon the duties of this office as such executors.

That the said Remick Huston at the time of his death was the owner of certain premises in said bill of complaint described, the title to which was held by your orator Job Remick, in trust for the estate of said Remick Huston, which said premises on the 15th day of July, A. D. 1872, sold to Joel D. Harvey for the sum of $157,000, $39,000 cash and the balance in three equal annual payments secured by the three promissory notes of said Harvey for $39,250 each, payable in one, two,
105 and three years, with interest at ten per cent. per annum, and that said notes were secured by a mortgage or trust deed of the premises, and that said notes were made payable in form to said Thomas T. Remick, but were in fact held by him in trust for said estate of Remick Huston.

And said bill among other things charged that said notes were delivered into the hands of said Bonney, Fay and Griggs, to be held by them for your said orators, but that, without any authority from your orators, in the month of May or June, A. D. 1875, they wrongfully delivered one of said promissory notes, to wit, the note for $39,250, which

by its terms became due July 15th, 1874, to the said Benjamin F. Remick, to enable the said B. F. Remick to use the same for the benefit of the firm of B. F. Remick and Co., of which the said B. F. Remick was a member, and the said Remick endorsed the same, as executor of said estate of Thomas T. Remick, without authority, permission, or knowledge of your said orators, to the firm of J. C. Ayer and Co. as collateral security for the payment of a sum of money loaned by
106 J. C. Ayer Co. to said firm of B. F. Remick Co., and that at the time said firm of B. F. Remick and Co. was utterly insolvent; and your said orators charged in said bill that said J. C. Ayer and Co. were not bona fide holders of said note, and at the time well knew that said note was being wrongfully transferred to the use of said B. F. Remick and Co.; and your said orators therein prayed that said promissory note might, by the final decree of this honorable court, be declared to be the property of your said orators, to be delivered and surrendered up to your orators, and that the said Joel D. Harvey might be decreed to pay said promissory note and interest thereon to your said orators, and that your said orators might have any other or further relief as to your honors should seem meet.

Your orators would further show unto your honors, by way of supplement, that on or about the 10th day of February, A. D. 1876, said Benjamin F. Remick voluntarily resigned his position and office as executor of the will of Thomas T. Remick, and his resignation was duly accepted by said probate court; and afterwards, and on the 23d
107 day of February, A. D. 1876, your said orators Edward J. Van Meter was duly appointed by said probate court of Pickaway County administrators de bonis non with the will annexed of Thomas T. Remick, and thereupon your said orators duly qualified and duly entered upon his office as such administrator. A duly-exemplified copy of the said proceedings of said court and of the letters testamentary to your said orator, Edward J. Van Meter, and of the will of said Thomas T. Remick are hereto annexed, marked "Complainants' Exhibit 1," and made a part hereof.

To the end, therefore, that the said defendants the said bill and amended bill may answer the matters herein charged by way of supplement, and that your orators, the said Edward J. Van Meter, may be allowed to prosecute said suit as to complainants, Palmer C. Smith and Job R. Remick, and may have the relief prayed for in said bill:

May it please your honors to grant to your orators a writ of summons against said defendants, as prayed for in said original and amended
108 bill, and that they be directed to answer the matters herein charged by way of supplement, and your orators will ever pray, etc.

PALMER C. SMITH.
JOB R. REMICK.
E. J. VAN METER.

MILLER and FROST,
Solicitors for Complainants.

THE STATE OF OHIO,
Pickaway County, ss:

I, Palmer C. Smith, being duly sworn, depose and say that all the several matters stated in the foregoing bill as from the information of others, I believe to be true, and that all the several other matters and things therein set forth are true in substance and in fact.

PALMER C. SMITH.

Sworn to by said Palmer C. Smith before me and su bscribed by him in my presence this 24th day of April, A. D. 1876.

[SEAL.] B. H. BOSTWICK, *N. P.*

Fee, 40 c'ts, p'd by P. C. Smith.

109 *Complainants' Exhibit* 1.

Pickaway County probate court, February 18th, A. D. 1876.

In the matter of the estate of Thomas T. Remick, deceased.

This day came Benjamin F. Remick, executor of the will of Thomas T. Remick, dec'd, and tendered his resignation as such executor; and having heretofore filed his accounts as such executor in this court, it is ordered that said resignation and the same is hereby accepted.

Probate court of Pickaway County, Ohio, Feb'y 23d, 1876.

In the matter of the personal estate of Tho's T. Remick.

This day came Edward J. Van Meter and asked to be appointed the administrator de bonis non with the will annexed of Thomas T. Remick, dec'd, late of said county, *dec'd*, representing the personal estate of said decedent to be administered, of the value of four thousand dollars.

Thereupon the said Edward J. Van Meter was appointed administrator de bonis non upon the personal estate, to be administrator of the said Thomas T. Remick, dec'd, and then he entered into bond in the sum of eight thousand ($8,000) dollars with Job R. Remick and Seymour R. Van Meter, his security, conditional according to law.

110 Samuel M. Owens, Stephen Kinnear, and Lyman E. Scoville were appointed appraisers.

THE STATE OF OHIO,
Pickaway County:

To all to whom these presents shall come, greeting:

Know ye that at a probate court holden within and for the county aforesaid, on the 23d day of February, A. D. 1876, Edward J. Van Meter was duly appointed by said court administrator de bonis non with the will annexed of the personal estate of Thomas T. Remick, late of said county, deceased; and whereas the said Edward J. Van Meter, having appeared before said court, accepted said appointment, and entered into bond with security, as required by said court:

These are, therefore, to authorize and empower the said Edward J. Van Meter to administer, according to law, all and singular the goods, chattels, moneys, rights, and credits of said deceased, and also the proceeds of all the real estate of said deceased, which he may be authorized to sell for the payment of the debts of said deceased, to collect all the debts due to and pay those due from the estate of said de-

111 ceased, so far as its means will extend and the law requires, and to do all things which may be lawfully done in the premises to effect the just and speedy settlement of said estate.

In testimony whereof the seal of said court is hereunto affixed.

Witness H. N. Hedges, s'n'r, judge of said court, this 23d day of February, A. D. 1876.

H. N. HEDGES, SEN'R,
Probate Judge.

THE STATE OF OHIO,
Pickaway County, ss :

I, Henry N. Hedges, sen., judge of the probate court and ex officio clerk of said court within and for said county, in the State aforesaid, do hereby certify that the above and foregoing to which this certificate is annexed is a full, true, and complete copy of the record of the entry of resignation of Benjamin F. Remick, executor of the last will and testament of Thomas T. Remick, deceased; a full, true, and complete copy of the record of the appointment of Edward J. Van Meter, administrator de bonis non with the will annexed of said Thomas T. Remick, deceased, truly taken and correctly copied from the journal-rec-
112 ords of said court; and also a full, true, and complete copy of the letters of administration issued to the said Edward J. Van Meter, truly taken and correctly copied from the record of letters of administration of said court as the same now appears to us of record in my said office, and that said records are kept, by authority of law, in my said office.

In attestation whereof I have hereunto set my hand officially and affixed the seal of my said office, in the city of Circleville in said county and State, this 6th day of April, A. D. 1876.

[SEAL.] H. N. HEDGES, SEN.,
Judge and ex-officio Clerk of the Probate Court of Pickaway County, Ohio.

THE STATE OF OHIO,
Pickaway County, ss :

I, Henry N. Hedges, sen., judge of the probate court, within and for the county of Pickaway, in the State of Ohio, (in which county the office above named of the said Henry N. Hedges, sen., is kept,) do certify that the said Henry N. Hedges, sen., who hath signed the above certificate and attestation, and to which the seal of said probate
113 court, being the only seal of office of said judge, and ex-officio clerk, is annexed, was, on the 6th day of April, A. D. 1876, and at the time of said certificate and attestation was made, the clerk of the probate court within and for the county of Pickaway and State of Ohio, and the keeper of the journal records and records of letters of administration for said county of Pickaway, and of the records and books of said public office, and that the said certificate and attestation of the said Henry N. Hedges, sen., is in due form and by the proper officer, and that to all acts by him so done full faith and credit are and ought to be given in judicature and thereout.

Circleville, Ohio, April 6th, 1876.

[SEAL.] H. N. HEDGES, SEN.,
Judge of the Probate Court of Pickaway County in the State of Ohio.

THE STATE OF OHIO,
Pickaway County, ss :

I, Henry N. Hedges, sen., judge and ex-officio clerk of the probate court within and for said county of Pickaway, in the State of Ohio, do hereby certify that Hon. Henry N. Hedges, sen., who hath given and signed the preceding certificate, was on the 6th day of April,
114 A. D. 1876, and at the time he made the above certificate, the judge of probate court within and for said county, duly commissioned and qualified.

In testimony whereof I do hereby subscribe my name and affix the seal of said court this 6th day of April, A. D. 1876.

[SEAL.] H. N. HEDGES, SEN.,
Judge and ex officio Clerk of Pickaway County Probate Court.

In the name of God amen.

I, Thomas T. Remick, of Pickaway County, Ohio, being of sound mind and memory, do make and publish this my last will and testament.

1st. I direct that all my just debts be paid.

2d. I give and devise to my brother, Job R. Remick, all my interest in the home farm, where we now reside, it being my desire to keep the said farm in the Remick name and family.

3d. Whereas I have a large interest in some coal and coke property in Southern Central Illinois, known as the S't Louis Coal and Coke Company, and the Sparling Lime and Mineral Company, the original
115 cost of my interest in said company being $5,000.00, which was paid for out of the funds belonging to myself and my brother, Job R., and whereas I have loaned to said companies the sum of about $10,000, to redeem the same from a sale made on execution, the said loan being made out of funds that belonged to myself, my sister, Mary Gregg, and the children of my deceased brother, Jonathan Remick. In order to close up said transaction in the most speedy manner, I give and bequeath all my interest in the said companies, together with the sum so loaned by me as aforesaid to my brother, Benjamin F. Remick, in trust to collect the money so loaned as soon as practicable, and as fast as the same is collected to pay the same over, the ⅛ part thereof to my said sister, Mary Gregg, the ⅛ part thereof to my nephews and neices, the children of my deceased brother, Jonathan Remick, and the other ⅛ to be disposed of by said trustee, Benjamin F., as is provided for in the 9th item of this my last will. And I further direct that all my interest in the said property and companies be sold by said trustee, either at a public or private sale, for cash, or upon such terms of credit as he in his wisdom shall think best, and the said sum of $5,000.00,
116 together with the interest thereon, shall be refunded or repaid to the firm account of myself and my brother Job that is, giving Job the ½ part thereof; and the residence to be disposed of as is provided for in the 9th item of this my last will and testament.

4th. Whereas I have and hold in my name an interest in the firm of Tower, Classen and Co., manufacturers of chromatic printing presses, which company are manufacturing said printing presses at Canton, Ohio, and which interest was paid for out of funds belonging ⅛ to myself, ⅛ to my sister, Mary Gregg, ⅛ to my nephews and neices, the children of my brother, Jonathan Remick, dec'd, it is my request that the whole interest in said company be held and retained so long as my brother, Benjamin F. Remick, may, in his discretion, think the same will be profitable, and I devise that the same shall be under the control and management of the said Benjamin F.; and as to my interest in the same, I desire that it shall be held, controlled, and managed by my said brother Benjamin F., for the benefit of himself and my nephews and neices, the children of my sister, Catharine Darst, dec'd, the children of my brother, Jonathan Remick, dec'd, and Henry R. Gregg,
117 the son of my sister, Mary Greggs, shall share alike, and I give and bequeath all my interest in said company to my said brother Benjamin F. Remick, in trust for himself and my said nephews and neices above named, in equal proportions, to be held, retained, and con-

trolled by my said brother Benjamin F., so long as he is in his discretion may deem advisable; my meaning is that each nephews and each neice is to take one share with my brother Benjamin.

5th. I direct that my executor shall pay to my brother, Felix Remick, the sum of $500.00 per year, the first payment to be made in one year after my death, and the sum of $500.00 to be paid to him at the end of each and every year thereafter so long as said Felix may live.

6th. I give and bequeath to my beloved mother-in-law, Maria Brown, my gray horse Doc.

7th. I direct my executor, hereinafter named, to build a good substantial iron fence around the graveyard on the farm belonging to myself and my brother Job R. Remick.

8th. As to the partnership existing between myself and my
118 brother Job, we having kept no accounts of the said partnership, as between ourselves, I will and direct that my executor, hereinafter named, in making a settlement of said partnership matters, take the statement of my said brother Job, and my statement of said partnership accounts that my said brother my make, I will and direct that the same shall be forever binding on my executors, heirs, and legatees, and all of them.

9th. All the rest and residue of my property, of every kind and description, I give and bequeath to my nephews and neices, the children of my sister, Catharine Darst, dec'd, the children of my deceased brother, Jonathan Remick, and Henry R. Gregg, the son of my sister, Mary Gregg, share and share alike, giving to each nephew and neice one share.

10th. It is my will, and I do direct that the bequests given in the third item of this my last will to my sister, Mary Gregg, and to my nephews and neices, the children of my deceased brother, Jonathan Remick, shall be taken by them in full satisfaction of their interest in the fund so loaned, as is therein stated, and upon the receipt of the same, they shall have no claim against me, either in my individual capacity or as trustee.

119 11th. I hereby nominate and appoint my brother, Benjamin F. Remick, executor of this my last will and testament, and having every confidence in his integrity, I direct that no bond be required of him as such executor.

In testimony whereof I hereunto set my hand, seal, this 1st day of August, 1873.

THOMAS T. REMICK.

Signed, sealed and acknowledged by Thomas T. Remick, as his last will and testament in our presence, and signed by us in his presence, and at his request.

P. C. SMITH.
JOS. M. REEVES.

THE STATE OF OHIO,
Pickaway County, ss:

We, P. C. Smith and Jos. M. Reeves, being duly sworn in open court, this 12th day of August, A. D. 1873, depose and say that we were present at the execution of the last will and testament of Thomas T. Remick hereunto annexed; that we saw the said testator subscribed said will and heard him publish and declare the same to be his last will
120 and testament and that the said testator at the time of executing the same was of full age and sound mind and memory, and not

under any restraint, and that we signed the same as witnesses at his request, and in his presence and in the presence of each other.

P. C. SMITH.
JOS. M. REEVES.

Sworn to and subscribed in open court this 12th day of August, A. D. 1873.

JAMES TAYLOR,
Probate Judge.

THE STATE OF OHIO,
Pickaway County, ss:

I, Henry N. Hedges, sen., judge of the probate court and ex-officio clerk of said court within and for said county in the State aforesaid, do hereby certify that the above and foregoing, to which this certificate is annexed, is a full, true, and complete copy of the record of the last will and testament of Thomas T. Remick, deceased, and the proof of the same truly taken and correctly copied from the record of wills of said court as the same now appears to us of record in my said office, and that said record is kept by authority of law in my said office. In attes-
121 tation whereof I have hereunto set my hand officially, and affixed the seal of my said office in the city of Circleville, in said county and State, this 6th day of April, A. D. 1876.

[OFFICIAL SEAL.] H. N. HEDGES, SEN.,
Judge and ex-officio Clerk of the Probate Court of Pickaway County, Ohio.

THE STATE OF OHIO,
Pickaway County, ss:

I, Henry N. Hedges, sen., judge of the probate court within and for the county of Pickaway in the State of Ohio, (in which county the office above-named of said Henry N. Hedges, sen., is kept), do certify that the said Henry N. Hedges, sen., who hath signed the above certificate and attestation, and to which the seal of said probate court, being the only seal of office of said judge and ex-officio clerk is annexed, was on the 6th day of April, A. D. 1876, and at the time of said certificate and attestation was made, the clerk of the probate court within and for the county of Pickaway, and State of Ohio, and keeper of record of wills for said county of Pickaway, and of the records and books of said public office, and that the said certificate and attestation of the said
122 Henry N. Hedges, sen., is in due form and by the proper officer, and that to all acts by him so done, full faith and credit are and ought to be given in judicature and thereof.

Circleville, Ohio, April 6th, 1876.

[SEAL.] H. N. HEDGES, SEN.,
Judge of the Probate Court of Pickaway County in the State of Ohio.

THE STATE OF OHIO,
Pickaway County, ss:

I, Henry N. Hedges, sen., judge and ex officio clerk of the probate court within and for said county of Pickaway in the State of Ohio, do hereby certify, Hon. Henry N. Hedges, sen., who hath given and signed the preceding certificate, was on the 6th day of April, A. D. 1876, and at the time he made the above certificate, the judge of the probate court within and for said county, duly commissioned and qualified. In testi-

mony whereof I do hereby subscribe my name and affix the seal of said court this 6th day of April, A. D. 1876.

[SEAL.] H. N. HEDGES, SEN.,
Judge and ex-officio clerk of Pickaway County Probate Court.

123 It is hereby stipulated that the complainants have leave to file the within supplemental bill.

GOUDY, CHANDLER AND SKINNER.

And afterwards, to wit, on the fourth day of May, in the year last aforesaid, defendants, by Goudy and Chandler, their solicitors, filed in said clerk's office their certain notice, petition, and bond, which are in the words and figures following, to wit:

Supreme court of Cook County, May term 1876. In chancery.

PALMER C. SMITH, JOB R. REMICK, ADMINISTRATORS and, etc.,
vs.
CHARLES C. BONNEY ET AL., JAMES C. AYER, some complainants, Charles C. Bonney, First National Bank of Westborough, Mass.

Messrs. MILLER and FROST,
Solicitors for Complainants:

Please take notice that we shall, on Thursday, the 4th day of May, instant, at the hour of 3 o'clock p. m., or as soon thereafter as counsel can be heard, petition the said court, before Judge Moore, at his room, on behalf of the defendants, James C. Ayer, Frederick Ayer,
124 and Albert G. Cook, in the one case, and the First National Bank of Westborough, Massachusetts, in the other, for orders removing each of the above entitled causes to the circuit court of the United States for the northern district of Illinois, in accordance with the act of Congress in such case provided.

GOUDY, CHANDLER AND SKINNER.
Sol. for said Defendants.

MAY 3D, 1876.

Service accepted this 3d day of May, 1876.

MILLER AND FROST,
Sol. for Complainants.

Superior court of Cook County. In chancery.

STATE OF ILLINOIS,
County of Cook, ss:

PALMER C. SMITH AND JOB R. REMICK, ADMINISTRATORS de bonis non, with the will annexed, of the estate of Remick Huston,
vs.
CHARLES C. BONNEY, J. EDWARDS FAY, Charles W. Griggs, Benjamin F. Remick, Benjamin F. Remick, executor of Thomas Remick, deceased, James C. Ayer, Frederick Ayer, Albert G. Cook, and Joel D. Harvey.

To the honorable judges of the superior court of Cook County, in
125 chancery sitting:

The petition of your petitioners, James C. Ayer, Frederick

Ayer, and Albert G. Cook, three of the defendants in the above-entitled suit, respectfully represents unto your honors that they are citizens and residents of the State of Massachusetts, and that the said complainants, and each of them, are citizens and residents of the State of Ohio, and that the defendants Joel D. Harvey, is a citizen and a resident of the State and northern district of Illinois, and that the defendants Charles C. Bonney, J. Edwards Fay and Charles W. Griggs are citizens and residents of the said State and northern district of Illinois, and that the said defendant Benjamin F. Remick is a citizen and resident of the State of Ohio.

And your petitioners further represent that in said suit there is a controversy between them, citizens of said State of Massachusetts, and the said complainants, citizens of said State of Ohio, and that the same is the principal controversy in said suit, and that the matter in dispute in said controversy and in said suit exceeds, exclusive of costs, the
126 sum or value of five hundred dollars.

And they further represent that the controversy in said suit can be fully determined as between all the parties to said suit and as between the said complainants and these defendants.

And they further represent that since the commencement of said suit there has been no term of said superior court of Cook County at which said suit could be tried. Your petitioners therefore pray that said cause be removed, by the order of this court, from this court into the circuit court of the United States for the northern district of Illinois, according to the act of Congress in such case made and provided.

JAMES C. AYER,
By FREDERICK AYER, *Att'y.*
ALBERT G. COOK,
By FREDERICK AYER, *Att'y.*
FREDERICK AYER.

GOUDY, CHANDLER and SKINNER,
Sol. for s'd Def'ts.

STATE OF MASSACHUSETTS,
County of Middlesex, ss:

Frederick Ayer, being duly sworn, on oath says that he is one of the petitioners in the above petition, and that he has read
127 the said petition and understands its contents, and that the same and matters therein stated are true in fact.

In witness whereof I have hereunto set my hand and affixed my notarial seal this twenty-ninth day of March, A. D. 1876.

[SEAL.] GEO. D. HILL, *N. P.*

Know all men by these presents that we, James C. Ayer, Frederick Ayer, and Albert G. Cook, of Lowell, Massachusetts, and William C. Goudy, of the city of Chicago, State of Illinois, are held and firmly bound unto Palmer C. Smith and Job R. Remick, administrators de bonis non, with the will annexed, of the estate of Remick Huston, in the final sum of one thousand dollars, for the payment of which sum well and truly to be made to the said Palmer C. Smith and Job R. Remick, administrators de bonis non, with the will annexed, of the estate of Remick Huston, their heirs, executors, administrators, and assigns, we bind ourselves, our heirs, executors, and administrators, firmly by these presents. Witness our hands and [illegible] this twenty-ninth day of March, A. D. 1876.

128 The conditions of this obligation is such that whereas the said James C. Ayer, Frederick Ayer, and Albert G. Cook are about to file in the superior court of Cook County, in the State of Illinois, their petition for the removal of a certain suit now pending in the said court, wherein the said Palmer C. Smith and Job R. Remick, administrator de bonis non, with the will annexed, of the estate of Remick Huston, are plaintiffs, and the said Charles C. Bonney, J. Edwards Fay, Charles W. Griggs, Benjamin F. Remick—executor of Thomas Remick, dec'd—James C. Ayer, Frederick Ayer, and Albert G. Cook and Joel D. Harvey are defendants, from the said superior court of Cook County into the circuit court of the United States for the northern district of Illinois.

Now, therefore, if the said James C. Ayer, Frederick Ayer, and Albert G. Cook shall enter in said circuit court of the United States for the northern district of Illinois on the first day of its next session a copy of the record in such suit and shall pay all costs that may be awarded by the said circuit court of the United States, if said court shall hold that such suit was wrongfully or improperly removed
129 thereto, then this obligation to be void; otherwise to remain in full force and effect.

JAMES C. AYER, [SEAL.]
By FREDERICK AYER, *Att'y.*
FREDERICK AYER. [SEAL.]
ALBERT G. COOK, [SEAL.]
By FREDERICK AYER, *Att'y.*
W. C. GOUDY.

And thereupon, to wit, on the day and year last aforesaid, the same being one of the days of the May term of said court, the following among other proceedings were had in said court and entered of record, to wit:

PALMER C. SMITH AND JOB R. REMICK, administrators de bonis non of the estate of Remick Huston, deceased, *vs.* CHARLES C. BONNEY, J. EDWARDS FAY, Charles W. Griggs, Benjamin F. Remick, Benjamin F. Remick, executor of the estate of Thomas T. Remick, deceased, James C. Ayer, Frederick Ayer, Albert G. Cook, and Joel D. Harvey.	Bill 3519. 60746.

This day come the defendants James C. Ayer, Frederick Ayer, and Albert G. Cook, by Goudy and Chandler, their solicitors.

And thereupon said defendants file herein their petition based
130 on affidavit for the removal of this cause into the United States circuit court in and for the northern district of the State of Illinois.

And it appearing to the court that the said defendants have filed herein their bond conditional according to the act of Congress in such case made and provided, it is ordered by the court that this cause be and the same is hereby transferred to the said United States circuit court, and that the clerk of this court do forthwith transmit to said

United States circuit court a complete transcript of all papers and pleadings filed in this cause, together with all orders of court made and entered therein.

STATE OF ILLINOIS,
Cook County, ss :

I, John J. Healy, clerk of the superior court of Cook County, within and for the State of Illinois, do hereby certify that the above and foregoing is a full, true, and complete transcript of all papers and pleadings now on file in my office and of all orders made and entered of record in said court in a certain cause lately pending in said court on the
131 chancery side thereof, wherein Palmer C. Smith et al. were complainants, and Charles C. Bonney et al. defendants.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Chicago, this 26th day of May, A. D. 1876.

[SEAL.] JOHN J. HEALY,
Clerk.

(Endorsed:) Filed June 21, 1876. W'm H. Bradley, cl'k.

132 Afterwards, to wit, on the 27th day of June, A. D. 1876, said defendant J. Edwards Fay filed in said clerk's office his answer in said entitled cause; which said answer is in the words and figures following, to wit:

133 *Answer of J. Edwards Fay.*

UNITED STATES OF AMERICA,
Northern District of Illinois, ss :

In the circuit court of United States in and for the said district, to the July term, A. D. 1876. In chancery.

PALMER C. SMITH AND JOB R. RENICK, administrators, &c.,
vs.
CHARLES C. BONNEY, J. EDWARDS FAY, Charles W. Griggs, Benjamin F. Renick, Benjamin F. Renick as executor of Thomas T. Renick, deceased, James C. Ayer, Frederick Ayer, Albert G. Cook, and Joel D. Harvey, Henry H. Porter, William H. Ferry, and James G. Goodman, trustees of the West Chicago Land Company, George C. Campbell, Anthony McElroy, Edward H. Davidson, Charles B. McElroy, and John McElroy.

134 The answer of J. Edwards Fay, one of the said respondents, to the bill of complaint and the amendments thereto of the said complainants.

This respondent, now and at all times hereafter saving and reserving to himself all benefit and advantage of exception which can or may be had or made to the many errors, uncertainties, and other imperfections in the said bill contained, comes and denies that the complainants have presented any such case as can or ought to be answered unto by the defendant, and he prays the same objection as could or might have made by demurrer to the said bill, yet for answer thereto he says:

That he denies that the said complainants are administrators de bonis non with the will annexed of the estate of Renick Huston, deceased, in the State of Illinois; that he admits, on information and belief, that they may be such administrators in the State of Ohio, but this defendant denies that thereby they have any right whatever to have or maintain this suit.

That he admits, on information and belief, that said Renick Huston died in the county of Pickaway, in the State of Ohio, the place of his domicile, at about the time alleged in said bill, leaving a last will
135 and testament, but this defendant cannot state of his own knowledge whether the alleged copy of said will attached to the said bill of complaint is a true copy of the said will of said Renick Huston or not. But this defendant admits, on information and belief, that the last will and testament of said Renick Huston was at some time in the year 1864 duly probated in the State of Ohio, and that the said Thomas T. Renick was appointed and was the executor of the said will in the State of Ohio; but this respondent denies that said Thomas T. Renick was ever such executor in the State of Illinois. That this respondent admits, on information and belief, that said Thomas T. Renick died, in said county of Pickaway, and State of Ohio, on or about the seventh day of August, A. D. 1873, leaving a last will and testament, and that the said Benjamin F. Renick was named and appointed in the said will the executor, thereof; that as this respondent is informed and believes, he was duly appointed such executor by the probate court of Pickaway on or about the fifteenth day of August, A. D. 1873, and that he entered upon and continued in his office as such executor at the time of the filing of the bill of complaint in this cause.

This respondent, further answering, says that he denies that said Renick Huston ever had any title of record to the premises mentioned and described in said bill of complaint, and says that at the time
136 of the death of the said Renick Huston the record-title to the said premises was in one Andrew Huston, deceased, subject, however, to sales of said premises for taxes, the time allowed by law for redemption of which had long expired, and upon which sales, or some of them, deeds had issued, or to which the person or persons holding the certificates of sale were entitled, and that such person or persons were then claiming title in fee to the said premises adversely to the estate of said Andrew Huston and all other persons whomsoever; and that if the estate of said Andrew Huston had any title or interest in the said premises the same was subject not only to the said adverse tax titles, but also to numerous claims and debts against the estate of said Andrew Huston, which the claimants were seeking to prove against the estate of the said Andrew Huston at the time of the death of the said Renick Huston, and for the payment of which any and all right, title, and interest which the estate of said Andrew Huston had in and to the said premises was afterwards sold by Julius Rosenthal, esq., the administrator of the estate of said Andrew Huston in the State of Illinois, by virtue of an order and decree of the county court of Cook County, in said State of Illinois.

And this respondent, further answering, most expressly denies
137 that the said Renick Huston ever employed Charles C. Bonney and this defendant, as is alleged in said bill of complaint, and denies that there ever was such firm or copartnership as Bonney & Fay, composed of the said Charles C. Bonney and this respondent; and this respondent denies, on information and belief, that the said Renick Hus-

ton ever had any acquaintance with or ever employed said Charles C Bonney in any way whatsoever.

This respondent denies that he was ever employed by said Renick Huston in his lifetime, except as is hereafter stated herein; admits that respondent knew, by information had by letters and report, of the death of said Renick Huston at or about the time it occurred, but denies that he (respondent) knew that he (said Renick Huston) owned the said premises or had any interest therein except as the devisee of his father, the said Andrew Huston, after the payment of the debts of said Andrew Huston, and the extinguishment of other claims and titles against the said land as aforesaid; and this respondent denies that said Thomas T. Renick ever employed this respondent or the said Bonney and this respondent as attorney for the estate of said Renick Huston, as is alleged in said bill.

This respondent, further answering, denies that said Charles W. Griggs, named as a defendant in said bill, was ever received into any firm of Bonney & Fay; but says that for some time prior to the
138 year 1869 this respondent was engaged in the practice of law in the city of Chicago, carrying on business in his own individual name; that in the year 1869 the said Bonney and the said Griggs (who before that time had been associated under the firm name and style of Bonney & Griggs) and this respondent commenced the occupation of certain rooms in common, and associated their names under the style of Bonney, Fay & Griggs, for use in court matters and such other uses as they should mutually agree upon and should be convenient to them; but this respondent most expressly denies that any firm of Bonney, Fay & Griggs was ever employed in any manner by any legal representatives of any estate of the said Renick Huston, to the knowledge of this respondent. And this respondent further says that the said Charles W. Griggs never had any interest in the business done by the said Charles C. Bonney, or in that done by this respondent for the said Thomas T. Renick, deceased, in his lifetime, or for his executors, as is hereinafter mentioned; and that the said Griggs never rendered any service therein so far as this respondent knows, except it may have been in some slight matter for the accommodation of the said Bonney or of this respondent.

And this respondent denies all appointment and all employment of the said Bonney, the said Griggs, and this respondent, or either of them, by the said complainants, or either of them, as attorneys for the estate of said Renick Huston, as is alleged in said bill.

139 And for a further answer to the matters and things mentioned in said bill as amended, this respondent states and says, and shows to the court, as follows: That some time in the year 1863 (about the month of September or October, as near as this respondent can recollect), the said Renick Huston called upon this respondent (who was then a lawyer in Chicago) and desired this respondent to assist him in examining the condition of certain lands situate in said Cook County, in the State of Illinois, which he (said Renick Huston) supposed to have belonged to his father, Andrew Huston, in his lifetime, and in which said Renick Huston supposed he had an interest by virtue of the will of said Andrew Huston.

That this respondent learned, as the result of such examination, that administration upon the estate of said Andrew Huston de bonis non, with the will annexed, had been granted in the county court of said county to one Julius Rosenthal.

That a large amount of claims had been allowed in said court against

the said estate of said Andrew Huston, and a decree and order of said court had been made directing a sale of said lands (including the premises in said bill mentioned) by said administrator for the payment of said debts against said estate.

Also that all said lands, including said premises, had been sold for non-payment of taxes, and that the time allowed by law for the redemption therefrom had expired.

140 That this respondent, in behalf of the said Renick Huston, procured the said decree in the said county court to be set aside, as well as the order allowing the said claims and the matter of allowing the same to be given a rehearing.

That said Renick Huston then left Chicago for his home in Ohio, and this respondent heard nothing more, so far as he now recollects, from or of said Renick Huston until some months after, when he heard that said Renick Huston was dead.

That in the year 1864, after the death of said Renick Huston, the said Thomas T. Renick, who was one of the devisees in the will of said Renick Huston, came to Chicago and employed this respondent, among other things, to aid him in ascertaining the condition of the lands in said Cook County supposed to have belonged to the said Andrew Huston in his lifetime; that much time was spent and most of the said lands visited by the said Thomas T. Renick and this respondent, and much effort made to ascertain the value thereof and the chance or possibility of recovering the same or any part thereof.

That all the said lands in which the said Renick Huston was supposed to have had an interest as aforesaid (he having been the sole devisee of his father, the said Andrew) were so encumbered by claims against the estate of the said Andrew Huston, and by tax titles and tax sales, that the entire estate did not appear to be equal in value to the said

141 debts, claims, and tax titles, and that in due course of administration there was or might be nothing for either the estate of the said Andrew Huston or the said Renick Huston; and the said Thomas T. Renick, ascertaining that nothing could be done without the risk, investment, and expenditure of many thousands of dollars of his own money, decided to return to his home in Ohio and take no further action in regard to said lands and estate.

That under the suggestion and advise of this respondent the said Thomas T. Renick finally changed his determination, and decided to risk and invest his own money in the hope of saving something, and to resist the proceedings of Julius Rosenthal, administrator, &c., as aforesaid, then pending in the county court of said Cook County, Illinois, to sell the said premises in said bill mentioned, with other lands, to pay the debts of said Andrew Huston, dec'd.

That the motive of said Thomas T. Renicks in so doing was to provide, after the payment to himself of all the moneys which he should use or which might be invested by him therein, together with all expenses and costs incurred in and about the said matters, according to his discretion and of his bounty, for persons mentioned in the said will of Renick Huston as legatees, and for the honor of the memory of the said Andrew Huston and the said Renick Houston, to pay at his election, of

142 the debts owing by them respectively at the time of their decease.

That he thereupon employed this respondent (the said Fay) as his general attorney for himself in and about the said litigation, and that he also afterwards employed this respondent as his general business agent concerning the said lands and such other matters and things

as might be connected therewith, or as he might otherwise have in said State of Illinois.

That all such employment of this defendant by the said Thomas T. Renick was, so far as this respondent knows, personal and not in any manner otherwise.

That said Thomas T. Renick also employed and retained the said Charles C. Bonney as associate counsel to assist said Fay in the litigation then pending in the said county court (in which the said Thomas T. was one of the defendants), and such as should and did arise thereafter, in which he should be interested, in the State of Illinois, in all of which the said Charles C. Bonney and the said J. Edwards Fay, respectively, acted for the said Thomas T. Renick and under his direction, except only so far as such action incidentally and by his direction extended to the other defendants in any of the said litigation and proceedings;

143 and this defendant avers that such employments of the said Bonney and of this defendant was in all respects a separate and not a joint employment and service, and that the employment of the said Charles C. Bonney and his service only extended to cases in court and matters of counsel; that other services and matters were in the exclusive charge of this respondent.

And this respondent, further answering, says that the said Thomas T. Renick, in the prosecution of his intention, as aforesaid, to try and save something out of said lands, was obliged to invest a large amount of his own money, as this defendant is informed and believes, in the purchase of tax-titles on the said lands, and in redemption from tax-sales and in the purchase of claims against the estate of Andrew Huston, and that he (said Thomas T. Renick) expended therein, as nearly as this respondent can now recollect, upwards of twenty-five thousand dollars thereof, and such proceedings were had that after a very long and tedious litigation as to the same the said lands (including the said premises in said bill mentioned) were sold by Julius Rosenthal aforesaid, as administrator, &c., as aforesaid, of Andrew Huston, pursuant to and under the decree of said county court to pay debts of the said Andrew Huston.

144 And this respondent further shows and says that a suit was also brought by one Anna Marsh and a decree obtained in the circuit court of the United States in and for the northern district of Illinois, to satisfy an alleged claim against the estate of the said Renick Huston, and that a part of the said lands in litigation under the said proceedings in the said county court (including all the premises mentioned in said bill of complaint) were sold under the decree of the said circuit court, and all the right, title, and interest, of which the said Renick Huston, at the time of his death, was possessed therein, was sold and disposed of thereby; that both of said sales were fair, open sales, made in public, free entirely to all competition, and under which sales, whatsoever interest, or title, the estates of either the said Andrew Huston or the said Renick Huston, respectively, had in the said premises and land was wholly extinguished and passed to the said Job R Renick (the purchaser thereof in name) for the sole benefit of the said Thomas T. Renick, who paid for the same at said sales with his own funds, but caused and directed the same to be so purchased in the name of said Job R. Renick, merely for any contingent benefit which might be

145 derived thereby.

And this respondent, further answering, says that the said Thomas T. Renick caused a paper to be drawn expressive of the fact that said Job R. Renick held the said title entirely subject to the direc-

tion of him, the said Thomas T. Renick, as to subsequent sales of the said lands, which paper was also expressive of the intention of said Thomas T. that the proceeds of said lands should be distributed after the amount necessary to pay to him his costs and all his outlay, charges, and expenses, of whatsoever kind, with interest thereon, in the payment of any unpaid debts of the said Andrew Huston and of the said Renick Huston then remaining unpaid, and then divided among the persons mentioned as legatees in the will of Renick Huston, and this respondent says that, as he believes, the said Thomas T. Renick did not in any manner in his lifetime recognize that any of the said debts or any claims of any of the said persons was a legal obligation upon him, but that he was disposed of his bounty and for the honor of the dead, to wit, the said Andrew Huston and the said Renick Huston, to pay the said
146 debts, and to provide for the said persons who had been named as legatees with him in the said will of Renick Huston.

And this respondent further says that, as he is informed and believes, the said paper was never executed by the said Job R. Renick, and that it is the belief of this respondent, and he so charges the fact to be, that the said Thomas T. Renick always regarding the said lands and all the money and proceeds thereof as the fruit and product of his own personal efforts and the investment of his own funds, and being fully determined so to keep and hold the said lands, money and proceeds that none of the creditors, devisees, or heirs of either the said Andrew Huston or the said Renick Huston might or could have or maintain any claim thereto, either at law or in equity, deliberately, after the effect of the execution of the said instrument in writing had been explained to him by counsel, withheld the same from execution by said Job R. Renick, to the end that said Job R. might hold the said lands, or such title as he had thereto, subject to the sole will and pleasure, order and direction of him, the said Thomas T. Renick, whereby all the said lands, held by the said Job R. Renick, as aforesaid, and the proceeds thereof, belonged to the said Thomas T. Renick and to his estate, and now belong to the es-
147 tate of the said Thomas T. Renick, deceased, and to the said Benjamin F. Renick, as the executor of his will, to be disposed of according to the will of the said Thomas T. Renick and the personal discretion thereby vested in him, *in him* the said Benjamin F. Renick, which discretion to manage, dispose of and distribute the said estate, having been so personally vested in the said Benjamin F. Renick, this respondent charges and alleges to be the reason and the sufficient reason why the said lands so held by said Job R. as aforesaid, or the proceeds thereof, or of any of them, were not more particularly mentioned and specified in the said will of said Thomas T. Renick.

And this respondent respectfully submits that the said Job R. Renick is accountable to the said Benjamin T. Renick, &c., for any of the said lands which *which* remained unsold at the time of the death of the said Thomas T., as aforesaid, and for any proceeds of any of the said lands, title to which is held by Job R., if any such proceeds have or shall come to his (said Job R.'s) possession or control, or if any of said lands shall be disposed of by him without the direction of the said Benjamin F.

And this respondent, further answering, says that pursuant to
148 the manner in which the said lands were held and owned by the said Thomas T., but the apparent title to which was in the said Job R. Renick, the said Thomas T. Renick at various times contracted to sell and did sell of the said lands. That, as this respondent is informed and believes, the said Job R. always executed deeds as said Thomas F. Renick directed, and that said Thomas F. received and disposed of the

proceeds of the said sales so far as the same were paid, and that no part thereof, as this respondent is informed and believes, ever passed to the hands of said Job R. or was in any manner disposed of by him, and this respondent says that a sale was made (of the said premises in said bill mentioned) by the said Thomas T. Renick (in his own right and as of his own land) to the said Joel D. Harvey at about the time and for the price named in said bill; that the first payment therefor was made to said Thomas T. Renick, and that notes were executed for the balance of the purchase-money payable to the order of said Thomas T. Renick substantially as is alleged in said bill, and the payment thereof was secured by a trust deed executed by said Joel D. Harvey to this respondent, as trustee, upon the premises sold, and that said Job R. Renick joined with said Thomas T. in the conveyance of the said premises so sold to
149 said Harvey on the request of the said Thomas T. Renick that he would do so, and with the understanding and consent, as this respondent is informed and believes, that the proceeds of the said sale should go to the said Thomas T. Renick to be disposed of by him as he should see fit.

This defendant, further answering, denies that the said notes and trust deed ever came to the possession of the said Thomas T. Renick, and denies that they were left by him in the custody and possession, and denies that they ever came to the custody and possession of Bonney, Fay & Griggs, but says that the said notes and trust deed were for a long time after said sale left in the custody of the respondent, George C. Campbell, until an abstract of title should be furnished, which was not done in a manner satisfactory until after the death of said Thomas T. Renick.

This defendant, further answering, says that after the death of said Thomas T. Renick, and the appointment of the said Benjamin F. Renick as executor of his last will, as aforesaid, the said Benjamin F. Renick continued the employment of this respondent as his attorney and general business agent as to matters pertaining to the estate of the
150 said Thomas T. Renick, in the State of Illinois, and that as such business agent and attorney this respondent, from time to time, made collections of money belonging, as this respondent avers, to the estate of said Thomas T. Renick, as aforesaid, and that this respondent by the direction, sanction, and assent of the said Benjamin F. Renick as the executor of Thomas T. Renick, as aforesaid, paid taxes on lands title to which was in said Thomas T. Renick, and on the lands title to which was in said Job R. Renick, as aforesaid, and paid other debts against the estate of said Thomas T. Renick out of money collected and received by him as such business agent in like manner as he had done under the direction of the said Thomas T. Renick in his lifetime.

And this respondent, further answering, says that the said Thomas T. Renick at the time of his death was copartner in a manufacturing business situated and carried on at Canton, in the State of Ohio, which business for manufacturing and selling printing-presses of a kind comparatively new, under certain patent rights, to which the said Thomas T. Renick became the owner in common with others; that the said Thomas T. became a partner in the firm before that time owning and carrying on the said business, that the said patent rights and the
151 prospective development of the said business was such that the same was supposed to be of very great value; that the said firm was very considerably indebted at the time of the death of said Thomas F. Renick that he, well knowing that the said business would require further aid and assistance from his estate, provided by his will that his

said executor, the said Benjamin F. Renick, should continue the interest of said Thomas T. in the said business, and manage and care for the same in such manner and for such time as the said Benjamin F. Renick in his direction should see fit; the said Thomas T. Renick intending when he made the purchase of the said interest in the said business to carry the same on and develop it with purpose of finally disposing of it in the exercise of his proposed bounty concerning the said matters in such manner and to such person or persons as he should think proper.

And this respondent, further answering, says that after the death of said Thomas T. Renick the said Benjamin F. Renick (as *as* this respondent is informed and believes) purchased the interest of one Peter G. Tower (who had been one of the partners of said Thomas T. Renick) in the said business, and that thereafter the said business was car-
152 ried on in the name and style of B. F. Renick & Co. (the name and style of the said firm before that having been Tower, Classon & Co.), and that the interest of the estate of said Thomas T. Renick continued therein as before.

And this respondent further says that the said business proving somewhat experimental, and the indebtedness made thereon during the lifetime of the said Thomas T. Renick, and afterwards becoming due, and the difficulties experienced by the said business from the financial panic which began in September, 1873, it became necessary that the said Benjamin F. Renick, as such executor, as aforesaid, should, from time to time, assist the said business, which he did by some of the funds and securities which he received from this respondent, and otherwise, and which belonged to the estate of the said Thomas T., as respondent avers as aforesaid.

And this respondent, further answering, says that, as he is informed and believes, the said Palmer C. Smith was the attorney and legal adviser of the said Thomas T. Renick in his lifetime as to the business and matters belonging to him in the State of Ohio, and that after the death of *of* said Thomas T. Renick, the said Smith became and still is (or till lately was) the attorney and legal adviser of the said Benjamin T. Renick, as the executor of the will of said Thomas T. Renick,
153 and this respondent says that in such transactions and correspondence as have occurred between this respondent and said Smith, since the death of said Thomas T. Renick, the said Smith has sustained the relation of such attorney of said Benjamin F. Renick, as executor, as aforesaid, and this respondent says that pursuant thereto, and by the direction of said Benjamin F. Renick, as such executor, this respondent has, at various times since the death of said Thomas T. Renick, paid to said Smith divers of the moneys collected and received by this respondent, as the attorney and agent of the said Benjamin F., as executor &c., as aforesaid, very large amounts of which money, as this respondent is informed and believes, the said Smith paid over to the said Benjamin F. Renick, as such executor, and some of which money the said Benjamin F. Renick used (with the knowledge of said Smith, at the time he so paid it to said Renick, that he intended so to do) in aiding and assisting the said business at Canton and the said firm of B. F. Renick & Co. in the same manner as the said complainants charge was done with the funds paid to said Benjamin F. Renick by this respondent.

And this respondent, further answering, says that the said notes executed by the said Harvey for the consideration of the sale of the
154 said lands were none of them delivered until about the first day of February, A. D. 1875; that the one of said notes which first be-

came due was never delivered to this respondent at all, but being fully paid at the time said title was made satisfactory, was cancelled; that, at about the time last above mentioned, the two of said notes last to becom due were delivered to this respondent as the attorney and agent of the said Benjamin T. Renick, as executor, as aforesaid; that the said Benjamin T. Renick almost immediately requested that the said notes should be delivered up to him, and that this respondent did then deliver up to said Benjamin F. Renick, or to his order, one of said notes, and that afterwards, on or about the 29th day of May, A. D. 1875, on his express personal request and demand therefor, this respondent delivered the other of the said notes to him as such executor, as aforesaid, as this respondent submits he was legally obliged and ought to have done.

And this respondent further says, that at about that time very considerable amounts of indebtedness of the said manufacturing business in Canton, Ohio, had become due and payable, and although the said business was, as this respondent was then informed and believed, giving good promise of success, and, finally, of large profits, if well and discreetly managed, it was absolutely necessary to the successfully carrying on of said business, and to the protection of the estate of
155 said Thomas T. Renick, which estate was supposed to be liable, with the other partners of said firm, for a great part, if not for the whole of the said indebtedness, and especially necessary to the protection of the interest of the said estate in the said business, that further time should be granted, or in some manner obtained, to the said firm and business in which to pay the said indebtedness; that the only way in which that could be done was by obtaining loans for such length of time that they could be paid out of the expected future profits of the said business, and the money obtained by such loans be used in the payment of the indebtedness of the said firm then due and past due.

And this respondent says that in pursuance thereof a loan was procured from J. C. Ayer & Co., of Lowell, Massachusetts, a firm composed of James C. Ayer, Frederick Ayer, and Albert G. Cook (who are made parties defendant in this suit), of thirty-nine thousand two hundred and fifty dollars, on or about the 29th day of May, A. D. 1875, to be paid on the 15th day of July, A. D. 1877, with interest at the rate of ten per centum per annum, which interest was to become due and payable on the 15th day of January, A. D. 1876, and at the end and period of every six months thereafter until the principal should be paid (the interest upon which to the 15th day of January, A.D. 1876, was paid and settled at the time said law was made.) That said Benjamin F. Renick, as the executor
156 of said Thomas T. Renick, dec'd, as aforesaid, endorsed the said note made by said Harvey, which was by its terms payable to the order of said Thomas T. Renick on the 15th day of July, A. D. 1875, but the payment of which had before that time been extended by the agreement of said Benjamin F. Renick with *with* Henry H. Porter, William H. Ferry, and James B. Goodman, as trustees of the West Chicag Land Company, for a period not exceeding two years from the tim when it was to become due by its original written terms, the paymen of the said note having been assumed by said West Chicago Land Company, and caused the said note to be delivered and transferred to the said J. C. Ayers & Co., to be held and owned by them as security for the payment of the said loans to the said firm of B. F. Renick & C with the interest thereon, until the same should be fully paid, it be the understanding that any surplus which should remain from said note of said Harvey should be paid to said Benjamin F. Renick or his order.

And this respondent, further answering, says that at the time of the agreement of said Benjamin F. Renick, as executor, &c., as aforesaid, with said Porter, Ferry & Goodman, it was, besides the agreement to extend the payment of said notes, also agreed that certain of the said premises in said bill mentioned, and in said trust deed described, might be released from the said trust deed upon notes of persons to
157 whom the said West Chicago Land Company had then contracted to sell about forty acres of the said premises to the amount of $96,000, secured by incumbrance upon that part of *of* said premises released as aforesaid, being placed in the hands of this respondent as security on the payment of said two notes for $39,250 to said Benjamin F. Renick, as executor, &c., or to the lawful holder of said notes (made by said Harvey).

And this respondent avers that the said complainant, Palmer C. Smith, as the attorney of said Benjamin F. Renick, as aforesaid, had full knowledge of and assented to the extension of payment of said Harvey notes and said change of securities therefor.

And this respondent, further answering, says that at the time of the making the said loan from said J. C. Ayer & Co. it was expressly agreed and understood with them that, in case such premises should be released from said trust deed, and said securities should be placed as aforesaid in the stead thereof by the said West Chicago Land Company, then and in that case a proper proportion of the said notes for the said $96,000, with the trust deeds securing the payment of the same, should be held by this respondent as security to and for the said firm of J. C. Ayer & Co. for the payment of the said note of $39,250, and the interest thereon, which had been assigned and transferred to the said J. C. Ayer & Co. as aforesaid at the time they made the said loan to said B. F. Renick & Co.

158 And this respondent, further answering, says that on or about the twenty day of July, A. D. 1875, the said West Chicago Land Company requested of this respondent a release of the south forty acres of land in said *in said* trust deed made by said Harvey to him described, and at the same delivered to this respondent twenty-four promissory notes, made, as appears, by the said McElroy and Davidson, and payable to the order of the West Chicago Land Company, and duly assigned and endorsed by it, each for the sum of four thousand dollars, with interest at eight per cent. per annum, payable annually, and one-half of which notes became due July 15th, 1876, and one-half of which notes became due July 15, 1877 (not allowing for grace on the same), all which notes were secured by trust deeds (one for each of two of said notes), for which notes this respondent gave said West Chicago Land Company, per James Goodman, esq., its treasurer, a receipt or statement in effect showing that this respondent, as the attorney of said Benjamin F. Renick, as executor, &c., as aforesaid, and further as trustee in said trust deed (as near as this respondent now remembers), had received and held the said notes for $95,000 as security for the payment of the said two notes made by said Harvey, with the interest to accrue thereon at the rate of eight per cent. per annum from July 15th, 1875, and to pay the balance derived from said notes over to said
159 West Chicago Land Company or their representatives or assigns.

And this respondent says that all the notes for $96,000 (24 notes for $4,000 each), with the twelve trust deeds securing the same, and which are made to the defendant, George C. Campbell, as trustee, are now in the custody and control of this respondent, and he respectfully submits

that he holds the same as security for the said two notes of $39,250 each, and interest thereon as aforesaid, one of which said notes is now held and owned, as this respondent believes, by said J. C. Ayer & Co., of Lowell, Mass., and the other by the First National Bank of Westboro, Massachusetts, and the balance, after said two notes shall have been fully paid for the said West Chicago Land Company, and that the said notes for $4,000, &c., should be collected by this respondent, and the proceeds paid out accordingly, and that the said complainants have no legal right to or claim upon the said notes, or either of them, or any of the proceeds thereof.

And this respondent, further answering, says that he admits that on or about the first of November last past, the said Benjamin F. Renick made a note payable to this respondent, as trustee, for fifty thousand dollars, and made a mortgage to respondent as trustee, conveying certain land situate in the State of Ohio; and this respondent says that the said note and the said mortgage were both made and delivered to this respondent to hold, and that he now holds the same as collateral
160 security for various notes which are held by various persons, some of which notes are made by the said Benjamin F. Renick individually, and some of which notes were made by the said firm of B. F. Renick & Co., and not in any manner to indemnify the said firm of Bonney, Fay & Greggs, or the said Bonney, or the said Greggs, for anything whatever.

And this defendant expressly denies that *that* he had any knowledge or belief that the said firm of B. F. Renick & Co. were insolvent at the time alleged in the said bill of complaint, and when the said Benjamin F. Renick effected the said loan from said firm of J. C. Ayer & Co., and used the said note of said Harvey as security therefor, that, so far as this respondent knew or believed, he supposed that the said firm was perfectly solvent, and that it was then making a profit in its business of between $1,000 and $2,000 per month, and that this respondent was informed and believed that by the aid thus obtained the existing difficulties of the said business would be removed and its success attained.

And this respondent most expressly denies all fraud and all unlawful act or acts whatsoever charged against him in the said bill, and says that, as to any and all matters and things in the said bill contained not herein specifically traversed, admitted, or denied, this respondent
161 denies the same, and each and every part thereof.

And, having fully answered the said bill, and the amendments thereto, this respondent prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

J. EDWARDS FAY,
By his solicitors, GOUDY, CHANDLER & SKINNER.

GOUDY, CHANDLER & SKINNER,
Sol'rs for said Defendant.

(Endorsed:) Filed June 27, 1876. Wm. H. Bradley, cl'k.

162 Afterwards, to wit, on the 10th day of July, A. D. 1876, in the record of the proceedings of said court in said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

PALMER C. SMITH ET AL
vs.
CHARLES C. BONNEY ET AL. } In chancery.

By agreement of the parties by their solicitors, it is ordered by the court that this cause be referred to Henry W. Bishop, esq., master in chancery of this court to take proofs herein and report the same to the court.

Afterwards, to wit, on the 11th day of July, A. D. 1876, said defendants Henry H. Porter, William H. Ferry, and James B. Goodman, trustees of the West Chicago Land Company, Joel D. Harvey, and George C. Campbell, filed in said clerk's office their answer in said entitled cause, while said answer is in the words and figures following, to wit:

163 *Answer of Porter, Ferry, Goodman, Harvey, and Campbell.*

United States of America, northern district of Illinois, ss, and circuit court thereof.

PALMER C. SMITH & JOB R. RENICK
vs.
CHARLES C. BONNEY ET AL.

The answers of Henry H. Porter, William H. Ferry, & James B. Goodman, trustees of the West Chicago Land Company, Joel D. Harvey, & George C. Campbell, to the bill & supplemental bill filed in said cause.

Now come the said Henry H. Porter, William H. Ferry, and James B. Goodman, Joel D. Harvey & George C. Campbell, & for answer to said bill & amended bill in said cause, or so much thereof as they are advised is necessary to be answered unto, say:

That they admit that Renick Huston died, as alleged in said bill, but they are not advised and cannot state whether Exhibit A, attached to said bill is a true copy of the will of said Huston, and call for proof in that regard.

Respondents further answering on information and belief, ad-
164 mit that Thomas T. Renick was duly appointed executor of the will of said Renick Huston.

They admit that said Thomas T. Renick, died, as alleged in the bill, & that Benjamin F. Renick was duly appointed executor, that complainants were appointed administrators de bonis non with will annexed of the estate of Renick Huston.

They are not informed and cannot state whether Renick Huston was the owner of the premises in the bill described and call for proof.

They do not know who were his attornies, nor who were the attornies of Thomas T. Renick.

Upon information and belief, they admit that the premises in the bill described were sold to Job R. Renick at judicial sale, & that by such sale the legal title thereto became vested in him, but they have no knowledge, information, or belief as to whether said Job R. Renick held said title in trust, as alleged in said bill, & therefore can neither admit nor deny the same, but call for proof in that regard.

Respondents further answering, admit that on or about the 15th day of July, 1872, said Job R. Renick, sold & conveyed said premises to

Joel D. Harvey for $157,000; that Harvey paid in cash $39.250, and made certain notes payable to Thomas T. Renick, as follows:

165 One note for $39,250, due in 1 year.
" " " " " " 2 years.
" " " " " " 3 years.

Also interest notes, as follows:
One note for $3,140, due in 1 year.
" " " $6,280, " 2 years.
" " " $9,240, " " 3 years.

And to secure the payment thereof, executed and delivered to J. Edwards Fay, a deed of trust, whereby he conveyed to said Fay the premises in said bill described.

Respondents admit that said Thomas T. Renick left said notes in the custody of Bonney, Fay & Griggs, but they do not know & cannot state whether Bonney, Fay & Griggs knew that they belonged to the estate of Renick Huston, as alleged in said bill.

Respondents further answering say, that they admit that Bonney, Fay & Griggs, were attornies for complainants.

Respondents further answering say, that they have no knowledge, information, or belief as to the dealings of the firm of B. F. Renick & Co., with complainants, or said Bonney, Fay & Griggs, nor whether said Bonney, Fay, & Griggs, delivered to said B. F. Renick for the use of said firm or otherwise, the said note for $39,250, as alleged in said

166 bill; nor whether the said B. F. Renick, as executor of Thomas F. Renick, endorsed said note to said B. F. Renick & Co., nor whether the said B. F. Renick & Co., endorsed the same to said J. C. Ayer & Co., as collateral security, as alleged in said bill, nor whether said note is now in the hands of Goudy & Chandler, as attorneys for J. C. Ayer & Co.

Respondents know nothing about the solvency or insolvency of B. F. Renick & Co. They do not know whether said Ayer & Co., knew that J. C. Ayer & Co., were not the bona fide holders of said note.

Respondents do not know whether said Benjamin F. Renick, executed and delivered to said J. Edwards Fay, the note for $50,000, & trust deed to secure the same, for the purpose of indemnity, as alleged in said bill.

Respondents do not know when complainants became informed of the matters & things complained of in said bill.

Respondents further answering admit that said Joel D. Harvey conveyed said premises to the said Porter, Ferry & Goodman, as trustees for the West Chicago Land Company, subject to the notes & trust deed first aforesaid, & that said trustees afterward sold the south forty acres

thereof to Anthony McElroy, Edward L. Davison, Charles B.
167 McElroy, & John J. McElroy, as alleged in said bill, & that an arrangement was entered into between the said trustees of the West Chicago Land Company, & the said complainant, P. C. Smith, as one of the administrators, & attorney for the estates of Renick Huston, & Thomas T. Renick, which was reduced to writing & signed by said Smith, & which was & is in substance as follows:

Whereas Joel D. Harvey, did heretofore execute, among other things, two promissory notes bearing date July 15, 1872, for the sum of ($39,250.00), thirty-nine thousand two hundred & fifty dollars each, payable respectively to the order of Thomas T. Renick, in two & three years after the date thereof, which notes were given as a part consideration for the sale of the W. ½ of S. W. ¼ of sec. 10, 39, 13 (except so much as had been before conveyed & was used for a railroad), situate in the county of Cook, & State of Illinois, & which notes are now the property of the

estate of Renick Houston, deceased, and whereas there is a suit now pending in the court of common pleas of Pickaway County, Ohio, affecting the property of said estate, and whereas it is desirable to the interest of said estate that said money sh'd be invested until the termination of said suit. And whereas the West Chicago Land Com-
168 pany have assumed the payment of the said notes, together with the interest thereon, & the s'd West Chicago Land Co. desires a postponement of the payment of both the s'd notes for a time. Now therefore, I, S. C. Smith, of the said county of Picka'y, & State of Ohio, one of the adm'n's de bonis non with the will annexed of said Renick Huston & att'y for said estate, do hereby say that I will not press the payment of said two notes until such time as I shall require the s'd money to be paid by reason of the termination of the said suit. The extension of the time of the payment of said two notes shall not in any event be for a time exceeding two years upon each of said notes, from the time when each of the said notes respectively become due & payable by the written terms thereof.

And further, the said maker of s'd notes, or the said West Chicago Land Co., are to pay interest upon the amount of said notes at the rate of eight per cent. per annum, payable annually.

And I hereby consent that the trustee in the trust deed securing the payment of the said notes, may release therefrom the south forty acres from the said trust, upon the said Harvey & the s'd West Chicago Land Co. furnishing to him to hold as collateral security for the payment of said notes in addition to the security of said trust deed
169 upon the residue of said tract of land in said trust deed conveyed, notes (together with the deed of trust securing the same) of the individual with whom the said West Chicago Land Co. have made a contract for the sale of the said south forty acres, or thereabouts, for the sum of ninety-six thousand ($96,000) dollars, to become due, one half July 15, 1876, & one half July 15, 1877, with interest payable annually at the rate of 8 p'r c. per annum, secured by deed or deeds of trust upon the s'd land, & shall furnish to said trustee for examination a proper abstract of title, showing a good title in said individuals, the makers of said collateral notes at the time of their being so given to s'd trustee, & the release being made.

It is understood that the s'd Joel D. Harvey & said West Chicago Land Co., upon the payment of all unpaid purchase money for s'd premises, together with all the accrued & accruing interest thereon, except the principal of the 2 notes above mentioned, are entitled to & shall have a release of 20 acres of said lands from the said trust deeds in addition to s'd forty acres to be released upon the conditions hereinbefore set forth as provided for in s'd deed of trust made by said Joel D. Harvey.

Sept. 12, 1874.

P. C. SMITH.
One of the adm'rs & att'y for the estate of
Ren. Huston & Tho's T. Renick.

170 And the said J. Edwards Fay, as the trustee referred to in said, writing assented thereto, and signed a stipulation to that effect, which was attached to said stipulation of said Smith, which was & is as follows:

In consideration of the above statement & request I hereby agree to

release the south forty acres of the tract above described upon the terms & conditions specified in the foregoing agreement.

Sept. 12, 1874.

J. EDWARDS FAY,
Trustee, &c.

Respondents further answering, deny that said writing was left with said Joel D. Harvey, but allege that it was left with said James B. Goodman.

Respondents further answering allege that the said James B. Goodman also received from the said Benjamin F. Renick, as executor of the last will and testament of Thomas T. Renick, deceased, his stipulation in writing, dated September 12, 1874, with an agreement of the said J. Edwards Fay, attached thereto, which is hereto attached as Exhibit A, & made a part hereof.

Respondents further answering allege that thereafter, and on or about the 21st day of July, A. D. 1875, the said Porter, Ferry & Good-
171 man, as trustees of the said West Chicago Land Company, delivered to the said J. Edwards Fay, the trustee in each of said agreements mentioned, the twenty compromissory notes for the sum of $4,000 each, in said bill described, as in said agreements is provided, & thereupon the said Fay, as trustee, in pursuance of the said agreements executed & delivered to them a release of the said south forty acres of said premises in said bill described, from the operation of the trust-deed in the said bill described, as is in said bill alleged.

Respondents further answering deny, that the said Porter, Ferry & Goodman, or either of them, delivered the said notes to said Benjamin F. Renick, as alleged in said bill, but on the contrary thereof they allege that said notes, and each of them, were delivered to said Fay in person, and to no other person or persons whomsoever.

And they deny that said Porter, Ferry & Goodman, or either of them, took the receipt of said Benjamin F. Renick therefor; on the contrary thereof they allege that the said Fay offered to the said Porter, Ferry, & Goodman, a receipt for said notes signed "Benjamin F. Renick, executor of Thomas Renick, deceased, by J. Edwards Fay, his att'y," but they refused to receive the same, for the reason that said notes
172 were not delivered to said Renick, and required the said Fay to sign the said receipt in person, as trustee, for the reason that said notes were delivered to him personally, as such trustee, which said receipt was & is in substance as follows:

Received, Chicago, July 21, 1875, of Henry H. Porter, William H. Ferry, and James B. Goodman, as trustees of the West Chicago Land Company, of Chicago, Illinois, twelve promissory notes, payable July 15, 1876, and twelve promissory notes payable July 15, 1877, which notes are each for the sum of four thousand ($4,000) dollars, and are all dated Chicago, February 2nd, 1874, executed by Anthony McElroy, Edmund L. Davidson, Charles R. McElroy, and John J. McElroy, and payable at the First National Bank of Chicago, Illinois, with interest payable July 15th, 1875, and annually thereafter, at the rate of eight (8) per cent. per annum; and trust-deeds to George C. Campbell, esq., as trustee, securing the payment of the said notes on the premises known as blocks numbered twenty-three (23), twenty-four (24), twenty-five (25), twenty-six (26), thirty-nine (39), forty (40), in the subdivision of the south half (S. ½) of sec. 10, town 39 N., R. 13 E., of 3rd P. M., situated in the county of Cook and *and* State of Illinois.

173 The said promissory notes above mentioned are received by

me, and are to be held as collateral security for the payment of two certain promissory notes, dated Chicago, July 15, 1872, made and executed by Joel D. Harvey, esq., and payable as written in two and three years after the date thereof, for the sum of thirty-nine thousand two hundred and fifty ($39,250) dollars each, to the order of Thomas F. Renick (now deceased), the payment of which said notes has by contract of the executor of the will of the said Thomas T. Renick, deceased, been extended for a period not exceeding two years upon each of said notes from the time when each note respectively becomes due by the written terms thereof, unless required before to make settlement of the estate of said Thomas T. Renick, and upon the provision that interest be paid upon each of said notes annually on July 15 of each year during such extended time, at the rate of eight per cent. per annum.

Upon the due payment of the said notes so taken and received as collateral as aforesaid, after payment of the said two notes for thirty-nine thousand two hundred and fifty ($39,250) dollars each, with the interest thereon, the surplus is to be paid to the said trustee of said West Chicago Land Company, and upon the payment of the interest from time to time due upon said collateral notes after the payment thereby
174 of any interest due and unpaid upon said notes made by said Harvey, the surplus thereof is to be paid to the said trustees.

BENJAMIN F. RENICK,
Executor of Thomas T. Renick, Deceased,
By J. EDWARDS FAY,
His Att'y.
J. EDWARDS FAY,
Trustee, &c.

Respondents further answering say, that they do not know whether any of said notes so delivered to said Fay as collateral as aforesaid, have gone into the hands of said Ayer & Co., but they allege that the makers thereof have the right to pay the same when due, & no doubt will be ready & willing so to do, & that upon such payment being made, the said Porter, Ferry & Goodman, as trustees of said land company, will be entitled to have the same applied to the payment and satisfaction of the said two notes for $39,250 and interest, as they respectively mature, & the balance paid over to them, and if the controversy as to who is entitled to receive the amount of said $39,250 notes, or either of them, shall continue, the said Porter, Ferry & Goodman, as trustees as aforesaid, will be entitled to have the amount thereof paid into court to await the result of this suit, and the balance of said collateral notes paid over to them as aforesaid.

175 And now, having fully answered, they pray to be hence dismissed with their reasonable costs.

HENRY H. PORTER,
WILLIAM H. FERRY,
JAMES B. GOODMAN,
Trustees of the West Chicago Land Company.
JOEL D. HARVEY and
GEORGE C. CAMPBELL,
By LAWRENCE, CAMPBELL & LAWRENCE,
Their Solicitors.

EXHIBIT A.

Whereas, Joel D. Harvey, of Chicago, Illinois, did heretofore execute,

among other things, two certain promissory notes bearing date the fifteenth day (15) of February, A. D. 1872, each for the sum of thirty-nine thousand two hundred and fifty ($39,250) dollars each, payable respectively to the order of Thomas T. Renick, in two and three years after the date thereof, which said notes were given as a part of the consideration for the sale of the premises situate in the county of Cook, and State of Illinois, known and described as the W. ½ of S. W. ¼ of section 10, T. 39 N., R. 13 E., of the 3rd P. M., except so much thereof as had
176 before been conveyed to the Galena and Chicago Union (now the Northwestern) Railway Company for a right of way;

And whereas, the said Thomas T. Renick had deceased since the said notes were given, and by reason of divers matters and things connected with his estate, the said estate cannot be settled for a very considerable time, and it is for the interest of his estate that the said money to become and having become due upon said notes shall be invested until it shall be required for the final settlement of the said estate;

And whereas the West Chicago Land Company have assumed the payment of the said notes, together with the interest thereon, and the said West Chicago Land Company desires a postponement of both the said notes for a time:

Now, therefore, I, Benjamin F. Renick, of the county of Pickaway and State of Ohio, the sole executor of the last will of the said Thomas T. Renick, late of said county of Pickaway and State of Ohio, deceased, do hereby say that I will not press the payment of the said two notes until such time as I shall require the said money to be paid to me to make settlement of the said estate, provided that the extension of the time for the payment of the said two notes shall not in any event be for a period exceeding two years upon each of said notes from the
177 time when each note respectively becomes due and payable by the written terms thereof upon the said notes; and also the said makers of said notes or the said West Chicago Land Company are to pay interest upon the amount of said notes at the rate of eight per cent. per annum, payable annually on the fifteenth day of July of each and every year, till the said notes shall be fully paid.

And I hereby consent that the trustee in the trust deed securing the payment of the said notes may therefrom the south forty acres of the said tract of land, upon the said Harvey or the said West Chicago Land Company furnishing to him to hold as collateral security for the payment of the said notes and interest, in addition to the security of the said trust deed upon the residue of the said premises hereinabove and in said trust deed described (and conveyed by said trust deed to J. Edwards Fay, as trustee), notes with proper deeds of trust securing the same, of the person or persons with whom the West Chicago Land Company has made a contract for the sale of the said south forty acres, or thereabouts, for the sum of ninety-six thousand ($96,000) dollars, to become due and payable, one-half on the fifteenth day of July, A. D. 1877, with interest payable annually at the rate of eight per cent. per annum, secured by deed or deeds of trust upon the said land, and shall
178 furnish the said trustee for examination a proper abstract of title showing a good title in said individuals, the makers of said collateral notes, at the time of their being so given to said trustee and the release being made.

It is understood that the said Joel D. Harvey and the said West Chicago Land Company, upon the payment of all unpaid purchase money for said premises, with all accrued interest thereon, except the rincipal of the two notes above mentioned, are entitled *are entitled* to

have a release of twenty acres of said lands from said trust deed to said Fay, in addition to said forty acres to be released from the conditions hereinabove and in said trust deed set forth.

BENJAMIN F. RENICK,
Executor of the last will of Thomas T. Renick, dec'd.

In consideration of the above statement and request, I hereby agree to release the south forty acres of the tract above described, upon the terms and conditions specified in the foregoing statement.

Chicago, Sept'r 12th, 1874.

J. EDWARDS FAY, *Trustee.*

(Endorsed:) Filed July 11, 1876. W'm H. Bradley, cl'k.

179 On the same day, to wit, on the 11th day of July, A. D. 1876, said complainants by their solicitors filed in said clerk's office their replication in said entitled cause, which said replication is in the words and figures following, to wit:

Replication to answer of def'ts Porter et al.

United States circuit court northern district of Ill's. July term, A. D. 1876.

PALMER C. SMITH ET AL.
vs.
CHARLES C. BONNEY, J. C. AYER, ET AL.

Replication of Palmer C. Smith et al., complainants, to the answer of Henry H. Porter, William H. Ferry, and James B. Goodman, trustees of the West Chicago Land Company, Joel D. Harvey, and George C. Campbell, to the bill and supplemental filed in said cause.

This repliant, saving and reserving to himself all manner of exception to the insufficiencies of said answer, for replication thereto, saith that he will aver and prove his said bill to be true, certain, and sufficient in law to be answered unto, and that the said answer of said defendants is untrue, and uncertain, and insufficient to be replied unto by this repliant, without this, that any other matter or thing in said answer material to be replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is and will be
180 ready to aver and prove as this honorable court shall direct, and humbly prays as in this bill he has already prayed.

MILLER AND FROST,
Sol'rs for Complainants.

(Endorsed:) Filed July 11, 1876. W'm H. Bradley, cl'k.

Afterwards, to wit, on the 12th day of July, A. D. 1876, there was filed in said clerk's office a transcript from the superior court of Cook County, Illinois, of the amendments to the bill in said entitled cause, which said transcript is in the words and figures following, to wit:

181 *Proposed amendments to complainants' bill of complaint.*

STATE OF ILLINOIS,
Cook County, ss:

Superior court of Cook County. In chancery.

PALMER C. SMITH AND JOB R. RENICK, administrators de bonis non, with will annexed, of Remick Huston, deceased,
vs.
CHARLES C. BONNEY, J. EDWARDS FAY, Charles W. Griggs, Benjamin F. Renick, Benjamin F. Renick, executor of Thomas T. Renick, deceased, James C. Ayer, Frederick Ayer, Albert G. Cook, Joel D. Harvey, William C. Goudy, and George Chandler.

1st. At the conclusion of the stating part of the bill, after the words on page of the bill, insert the following:

And your orators would further show unto your honors that
182 after the purchase of the property first above described, and the execution of a trust deed to said J. Edwards Fay, to secure the payments of said promissory notes as hereinbefore stated, said Joel D. Harvey conveyed said property to Henry H. Porter, William H. Ferry, and James B. Goodman, as trustees of the West Chicago Land Company, a joint stock association, and not incorporated, as your orators are informed and believe, subject to the said trust deed so given as aforesaid.

And the said trustees of the said West Chicago Land Company afterwards sold, as your orators are informed and believe, the south forty acres of said eighty acres to Anthony McElroy, Edward L. Davidson, Charles B. McElroy, and John J. McElroy, and pending the negotiation for the sale of said property by said trustees, and on or about the 12th of September, 1874, your orator, Palmer C. Smith, was applied to by said Joel D. Harvey and informed that the purchasers of said property, to wit, said south forty acres, desired that the same should be subject to only one trust deed.

That the notes or obligations which they were to give for the property would be secured by a trust deed of the same, and that said notes amounting to ninety-six thousand dollars ($96,000) would be deposited as collateral security for the payment of said two notes of $39,250 each
183 above mentioned, and requesting your orator to consent to the release of said south 40 acres from the operation of said trust deed to said J. Edwards Fay, and hold said last mentioned notes in the place of the land so released, and as collateral security for the payment of said two notes of $39,250 each, and also requested that your orator, said Smith, would extend the payment of said two notes for two years respectively.

That your orator assented to the release of said forty acres upon the terms and in the manner proposed, but stated that he could not enter into any binding contract to extend the payment of said notes as requested, but that a suit had been brought and was then pending in the State of Ohio involving said estate of Renick Huston, deceased, and that the money represented by said notes would not be required by said estate until said litigation was terminated.

That he was satisfied that said litigation would last at least during the time that said parties desired said payments to be extended, and that he would not, as the representative of said estate, press the collection of said notes until said litigation should terminate.

And your orator, the said Smith, thereupon entered into an arrangement touching said matters which was reduced to writing and signed by your orator, said Smith, as one of the administrators, and as attorney for the estate of Renick Huston and Thomas T. Renick.

184 That a copy of said arrangement is hereto annexed, marked Complainant's Exhibit C, and prayed to be taken as a part hereof.

That in said writing it is expressly stated that said two notes belong to the estate of Renick Huston, deceased.

That said writing was left with and retained by the said Joel D. Harvey, and is now, as your orators are informed and believe, in his possession or in the possession of his attorneys.

That said writing contains a clear and distinct statement of the title of your orators as representatives of the estate of Renick Huston, deceased, to said two notes, and for whose benefit the notes to be given by the purchasers of the land from the West Chicago Land Company should be held in case said south 40 acres should be released as aforesaid.

Your orators would further show unto your honor that, as they are informed and believe, said trustees of the West Chicago Land Company did thereupon sell said south 40 acres of said land to Anthony McElroy, Edward L. Davidson, Charles R. McElroy, and John J. McElroy, and that the said purchasers gave to said trustees, among other things, their twelve promissory notes for four thousand dollars each, and payable July 15th, 1876, with interest, and also their twelve promissory notes for four thousand dollars each, payable July 15th, 1877, and also executed a trust deed of said land so conveyed to them to George C. Camp-

185 bell, esq., to secure the payment of said notes.

That the said J. Edwards Fay executed a release of said 40 acres to the said trustees of the West Chicago Land Company from the operation of said trust deed, but your orators say that the said Harvey or the said trustees of the West Chicago Land Company, instead of delivering said twenty-four promissory notes for $4,000 each to said Fay to hold as collateral security for the payment of said two notes of $39,250 each, and in the place and stead of said forty acres of land so released as aforesaid, delivered the same to Benjamin F. Renick, executor of the estate of Thomas T. Renick, deceased, and took his receipt therefor by the said J. Edwards Fay as his attorney, dated July 21st, 1875.

And your orators aver that they never consented in any way or manner to the delivery of said notes to said Benjamin F. Renick or to the placing of the same within his reach or control, and that the deliverin of said notes in that manner was in fraud of your orators, rights in the premises.

Your orators further allege that, as they are informed and believe, a portion of said notes (but how many your orators are unable to state) were delivered to said J. C. Ayer & Co. in connection with said note of $39,250, to accompany the same and as collateral security for the payment thereof.

And your orators aver that the said J. C. Ayer & Co. are not

186 bona fide holders of said notes, and that the same should be delivered up *up* to your orators, together with said note for $39,250 aforesaid, and remain as collateral security for the payment thereof,

and in the place of the land so released from said trust deed, as hereinbefore stated.

2nd. In the clause naming the defendants to said bill insert the following names on page after the words : Henry H. Porter, William H. Ferry, James B. Goodman, trustees of the West Chicago Land Company; George C. Campbell, Anthony McElroy, Edward L. Davidson, Charles B. McElroy, and John J. McElroy.

3rd. In the prayer for relief on page after the words insert the following clause:

And that the said Anthony McElroy, Edward L. Davidson, Charles B. McElroy, and John J. McElroy may be enjoined from paying said twenty-four promissory notes, or either of them, to the said J. C. Ayer & Co., or to any other persons than to your orators, and under the order and direction of this honorable court; and that the said George C. Campbell be enjoined from releasing any portion of the land conveyed to him to secure the payment of said notes otherwise than under the direction of this honorable court; and that the said Henry H. Porter, William
187 H. Ferry, and James B. Goodman may likewise be enjoined from interfering with said promissory notes, or any of them; and that the said Charles C. Bonney, J. Edwards Fay, and Charles W. Griggs may also be enjoined from interfering or in any manner intermeddling with said promissory notes except under the order and direction of this honorable court.

PALMER C. SMITH.
JOB R. RENICK,
Per P. C. SMITH.

MILLER & FROST,
Solicitors for Compl'ts.

STATE OF OHIO,
Pickaway County, ss:

Palmer C. Smith, being duly sworn, deposes and says that he is one of the complainants in the above-entitled cause; that he has read the foregoing proposed amendments to the bill of complaint filed therein; that he has learned of said facts since the commencement of this suit; that the said proposed amendments are true except as to matters therein stated upon information & belief, and that as to those matters he believes them to be true.

PALMER C. SMITH.

Subscribed and sworn to before me this 12 day of Feb'y, 1876.
188 [NOTARIAL SEAL.] W. F. HURST,
Notary Public.

Complainant's exhibit C.

Whereas Joel D. Harvey did heretofore execute among other things two promissory notes bearing date July 15, 1872, for the sum of ($39,250) thirty-nine thousand two hundred and fifty dollars each, payable respectively to the order of Thomas T. Renick in two and three years after the date thereof, which notes were given as a part consideration for the sale of the W. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ of sec. 10, 39, 13 (except so much as had been before conveyed and was used for a railroad), situate in the county of Cook and State of Illinois, and which notes are now the property of the estate of Renick Huston, dec'd; and whereas there is a suit

now pending in the court of common pleas of Pickaway County, Ohio, affecting the property of said estate; and whereas it is desirable to the interest of said estate that said money should be invested until the termination of said suit; and whereas the West Chicago Land Company have assumed the payment of the said notes, together with the interest thereon, the said West Chicago Land Company desires a postpone-
189 ment of the payment of both the said notes for a time:

Now, therefore, I, P. C. Smith, of the said county of Pickaway and State of Ohio, one of the adm's de bonis non, with the will annexed, of said Renick Huston, and att'y for said estate, do hereby say that I will not press the payment of said two notes until such time as I shall require the said money to be paid by reason of the termination of the said suit; the extension of the time of the payment of said two notes shall not in any event be for a time exceeding two years upon each of said notes from the time when each of the said notes respectively became due and payable by the written terms thereof.

And further, the said maker of said notes or the said West Chicago Land Co. are to pay interest upon the amount of said notes at the rate of eight per cent. per annum, payable annually. And I hereby consent that the trustee in the trust deed securing the payment of the said notes, may release therefrom the south forty acres from the said trust upon the said Harvey or the said West Chicago Land Co. furnishing to him to hold as collateral security for the payment of said notes in addition to the security of said trust deed upon the residue of said tract of land in said trust deed conveyed notes (together with the deed of trust securing the same) of the individuals with whom the said West Chicago Land Co. have made a contract for the sale of the said
190 south forty acres or thereabouts for the sum of ninety-six thousand ($96,000) dollars, to become due one-half July 15, 1876, and one-half July 15, 1877, with interest payable annually at the rate of 8 per % per annum, secured by deed or deeds of trust upon the said land, and shall furnish to said trustee for examination a proper abstract of title showing a good title in said individuals, the makers of said collateral notes, at the time of their being so given to said trustee and the release being made. It is understood that the said Joel D. Harvey or said West Chicago Land Co. upon the payment of all unpaid purchase money for said premises together with all the accrued and accruing interest thereon, except the principal of the 2 notes above mentioned, are entitled to and shall have a release of 20 acres of said lands from the said trust deed in addition to said forty acres to be released upon the conditions hereinabove set forth as provided for in said deed of trust made by said Joel D. Harvey.

(Signed) P. C. SMITH,
One of the Adm'rs and Att'y for the Estate of Renick Huston and Tho's Renick.

Sept. 12, 1874.

(Endorsed:) Filed February 14, 1876. Jno. J. Healy, clerk.

191 STATE OF ILLINOIS,
Cook County, ss:

I, John J. Healy, clerk of the superior court of Cook County, in and for the State of Illinois, do hereby certify the above and foregoing to be a true, perfect, and complete copy of a certain amendments to bill of complaint now on file in my office, in a certain cause lately pending in said court on the chancery side thereof, wherein Palmer C. Smith et al. were complainants and Charles C. Bonney et al. defendants.

In witness whereof I have hereunto set my hand and affixed the seal of said court at Chicago, this 11th day of July, A. D. 1876.

[SEAL.] JNO. J. HEALY,
Clerk.

(Endorsed:) Filed July 12, 1876. W'm H. Bradley cl'k.

192 Afterwards, to wit, on the 13th day of July, A. D. 1876, in the record of the proceedings of said court in said entitled cause before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

PALMER C. SMITH ET AL.
vs. } In chancery.
CHARLES C. BONNEY ET AL.

Now come the parties by their solicitors, and on motion of complainants' solicitor, leave is given complainants to withdraw their replication to the answers of defendants Henry H. Porter, William H. Ferry, and James B. Goodman, trustees, &c., and Joel D. Harvey, and George C. Campbell.

And afterwards, to wit, on the 14th day of July, A. D. 1876, in the record of the proceedings of said court in said entitled cause before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

PALMER C. SMITH ET AL.
vs. } In chancery.
CHARLES C. BONNEY ET AL.

Now come the parties by their solicitors, and Messrs Lawrence, Campbell and Lawrence, solicitors, enter the appearance of defendants Anthony McElroy, Edward L. Davidson, Charles B. McElroy, and John J. McElroy, and adopt in their answer herein the answer of the West Chicago Land Company, Joel D. Harvey and George C. Campbell. The answers to the original bill to stand as the answers to the supplemental bill herein, and leave is given complainant to file replication to answer of J. Edwards Fay; and thereupon this cause is set down for hearing upon the pleadings herein and on proofs taken on the answer of defendant James C. Ayer, and after hearing the same in part the further hearing of the same is postponed until to-morrow morning.

193

194 And on the same day, to wit, the 14th day of July, A. D. 1876, said complainants by their solicitors filed in said clerk's office their replication to the answer of J. Edwards Fay, which said replication is in the words and figures following, to wit:

Replication to answer of J. Edwards Fay.

Circuit court U. S., northern district of Ill's, July T., 1876.

PALMER C. SMITH, ADM'R, ET AL.,
vs. }
CHARLES C. BONNEY, J. EDWARD FAY, TRUSTEE, Ayer, et al.

The replication of complainants to the answer of J. Edwards Fay. The repliant, saving all exceptions to the insufficiencies of said an-

swer, says that they will prove their said bill true, certain, and sufficient, and said answer untrue, uncertain, and insufficient, &c.

MILLER AND FROST,
Sol'rs for Complainants.

(Endorsed:) Filed July 14, 1876. W'm H. Bradley, cl'k.

Afterwards, to wit, on the 15th day of July, A. D. 1876, in the record of the proceedings of said court in said entitled cause, before the
195 Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

PALMER C. SMITH ET AL.
vs.
CHARLES C. BONNEY ET AL. } In chancery.

Now come again the parties by their solicitors, and after hearing the concluding arguments of counsel herein, the court, not being now sufficiently advised in the premises, takes the cause under advisement.

Afterwards, to wit, on the 31st day of July, A. D. 1876, in the record of the proceedings of said court in said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

PALMER C. SMITH AND JOB R. RENICK, administrators de bonis non of the estate Renick Huston, deceased,
vs.
CHARLES C. BONNEY, J. EDWARDS FAY, CHARLES W. Griggs, Benjamin F. Renick, Benjamin F. Renick as executor of Thomas T. Renick, deceased, James C. Ayer, Frederick Ayer, Albert G. Cook, and Joel D. Harvey, Henry H. Porter, William H. Ferry, and James B. Goodman, trustees of The West Chicago Land Company, George C. Campbell, Anthony McElroy, Edward H. Davidson, Charles B. McElroy, and John McElroy. } In chancery.

Now come the parties by their solicitors, and this cause having
196 been heretofore heard upon the transcript of the record from the State court, the pleadings, and proofs, and exhibits herein, and the court having considered and being now fully advised in the premises finds the equities herein with the defendants and dismisses the bill herein at the costs of the complainants without prejudice as to the defendants Benjamin F. Renick and J. Edwards Fay.

It is thereupon considered, adjudged, and decreed by the court that this cause be dismissed and that the defendants have and recover of and from the complainants their costs and charges by them about their defence in this behalf expended, amounting to the sum of one hundred and twenty-six dollars and sixty-five cents, and that execution issue therefor.

And thereupon the complainants pray an appeal to the Supreme Court of the United States, which is allowed upon giving bond herein in the penal sum of one thousand dollars with security to be approved by the court or by the clerk of this court.

197 And on the same day, to wit, the 31st day of July, A. D. 1876, the following certificate of evidence was filed in said entitled cause, and is in the words and figures following, to wit:

Certificate of evidence.

Circuit court of the United States.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

PALMER C. SMITH AND JOB R. RENICK, ADMINISTRATORS de bonis non with the will annexed of Renick Huston, deceased, and Edward J. Van Meter, administrator de bonis non with the will annexed of Thomas T. Renick, deceased, complainants,

vs.

CHARLES C. BONNEY, J. EDWARDS FAY, CHARLES W. Griggs, Benjamin F. Renick, James C. Ayer, Frederick Ayer, Albert G. Cook, Joel D. Harvey, and Henry H. Porter, William H. Ferry and James B. Goodman, trustees of the West Chicago Land Company, and George C. Campbell, Anthony McElroy, Edward L. Davidson, Charles B. McElroy, and John J. McElroy, defendants. } In chancery.

198 This is to certify that upon the hearing of the above-entitled cause the complainants introduced and read in evidence the following stipulation:

United States circuit court, northern district of Illinois. In chancery.

PALMER C. SMITH AND JOB R. RENICK, ADMINISTRATORS de bonis non with the will annexed of Renick Huston, deceased,

vs.

CHARLES C. BONNEY, J. EDWARDS FAY, CHARLES W. Griggs, Benjamin F. Renick, Benjamin F. Renick, executor, &c., James C. Ayer, Frederick Ayer, Albert G. Cook, Joel D. Harvey, Henry H. Porter, W'm H. Ferry, and James B. Goodman, trustees of the West Chicago Land Company, George C. Campbell, Anthony McElroy, Edward L. Davidson, Charles B. McElroy, and John J. McElroy.

It is admitted on behalf of the defendants James C. Ayer, Frederick Ayer, and Albert G. Cook:

1. That Andrew Huston was seized in fee simple absolute of the west half of the southwest quarter of section ten in township thirty-nine north, of range thirteen east, of the third principal meridian during his lifetime and at the time of his death.

2. That Andrew Huston died in March, 1854, in the county of Pickaway, in the State of Ohio, where he resided, leaving a will, by which he devised his property, including the above tract of land,

199 to his son Renick Huston, subject to the payment of his debts, land appointed Jonathan Renick as executor of his estate, to whom letters testamentary were issued on the 20th day of March, 1854.

3. That Jonathan Renick died in September, 1862.

4. That Renick Huston died in February, 1864, leaving a will, a copy of which is attached as "Exhibit A," and that letters testamentary were issued to the executor, Thomas T. Renick, by the probate court of Pickaway County, Ohio, on the 17th day of February, 1864.

5. That on January 22nd, 1863, letters of administration de bonis non with the will annexed of the estate of Andrew Huston were issued by the county court of Cook County to Julius Rosenthal, who, on the 19th day of September, 1863, filed a petition in said court for leave to sell the real estate of said Andrew Huston to pay his debts, and among other property described in said petition was said tract of land; and such proceedings were had under said petition that said tract of land was sold, under the decree of the court rendered therein, on the 12th day of July, A. D. 1871, to Job R. Renick, and on the same day a deed was made by the said administrator to said Job R. Renick, conveying said tract of land in accordance with the directions of said decree.

200 6. That on the 28th day of May, A. D. 1868, a bill was filed in the circuit court of the United States for the northern district of Illinois by Anna Marsh against Thomas T. Renick, executor of Renick Huston, for the purpose of compelling a sale of the real estate of which the said Renick Huston died seized in the manner directed by the will, in order to raise funds to pay the bequests therein; and such proceedings were had under said bill of complaint that a decree was rendered in accordance with the prayer thereof, and under said decree the said tract of land was sold to the said Job R. Renick on the 11th day of July, 1871, and on the same day a deed was made in accordance with the directions of said decree by the said Thomas T. Renick, executor of Renick Huston, conveying said tract of land to Job R. Renick.

7. That Thomas T. Renick died in August, A. D. 1873, in Pickaway County, Ohio, at the place of his residence, leaving a will, by which Benjamin F. Renick was appointed executor, to whom letters testamentary were issued by the probate court of said county, a copy of which will is made a part of this stipulation, and marked "Exhibit B."

8. That in September, 1873, the complainants, Palmer C. Smith and Job R. Renick, were appointed by the probate court of the said county of Pickaway administrators de bonis non with the will annexed of Renick Huston.

201 9. That although Job R. Renick became, in the manner aforesaid, seized in fee simple absolute of the title to said tract of land, as appears by the record, yet, by an arrangement between the parties interested, but which does not appear of record, he held it in trust for the benefit of the estate of Renick Huston and Thomas T. Renick, but it is not admitted that there was any notice of said trust to Joel D. Harvey or to the defendants James C. Ayer, Frederick Ayer, and Albert G. Cook, or to either of them, but on the contrary such notice is expressly denied by said James C. Ayer, Frederick Ayer, and Albert G. Cook.

10. On the 15th day of July, 1872, the said Job R. Renick and Thomas T. Renick, as administrator with the will annexed of Andrew Huston, and as executor of the will of Renick Huston, and in his own right, executed a warranty deed to Joel D. Harvey, and for a consideration of $157,000 conveyed the west half of the southwest quarter of said section ten, township 39 N., R. 13 E., of 3rd P. M., except so much thereof

as had been conveyed for a right of way for a railroad, and subject to a lease to John Clark, which expired on the 1st of May, 1873; and the said Joel D. Harvey on the same day executed six notes for a part of the purchase money, bearing date on the 15th day of July, 1872, payable to the order of Thomas T. Renick, three of which notes were for the principal sum of $39,250, and payable in 1, 2, and 3 years, respect-
202 ively, and one for $9,420, payable one year after the date thereof, one for $6,280, payable two years after the date thereof, and another for $3,140, payable three years after the date thereof. The three last notes being for interest on said principal notes, and all payable at the First National Bank, Chicago, Illinois, and bearing interest at ten per cent. per annum after due. And at same time the said Joel D. Harvey executed a deed of trust upon said land to J. Edwards Fay to secure the payment of said six notes; and that said Harvey, in taking the title to said land and executing the said deed of trust, acted for the West Chicago Land Company, which was the real purchaser of said premises, and he subsequently conveyed said tract of land to said company, subject to the incumbrance aforesaid; and for a correct statement of the contents of said deed and deed of trust reference is to be made to the originals or copies thereof to be produced on the trial of this case.

The complainants and defendants are to be allowed to disprove any of the facts herein stated, notwithstanding this admission, if they can do so, and to prove any other facts material to the case.

And it is further agreed that in case said bill is dismissed by the final order of the court it may be dismissed without prejudice as to the other defendants than the above-named James C. Ayer, Frederick Ayer, and Albert G. Cook.

203 GOUDY, CHANDLER AND SKINNER,
Sol'rs for said Defendants James C. Ayer and Co.

(Endorsed:) Filed July 15, 1876. W'm H. Bradley, cl'k.

And also the following stipulation:

Circuit court of the United States, northern district of Illinois.

PALMER C. SMITH AND JOB R. RENICK, administrators, &c., of Renick Huston, dec'd,
vs.
CHARLES C. BONNEY ET AL., THE FIRST NATIONAL BANK of Westborough, et al. } Bill.

SAME COMPLAINANTS
v.
CHARLES C. BONNEY ET AL., JAMES C. AYER et al. } Bill.

It is stipulated that the above entitled two causes be referred to the master in chancery, Henry W. Bishop, to take proof and report, and that either party may take testimony before him upon giving one day's notice, and that the testimony taken in one cause may be read in the other as far as applicable.

GOUDY, CHANDLER AND SKINNER,
Sol'rs for Defendants.

MILLER AND FROST,
Sol'rs for Complainants.

204 (Endorsed:) Filed July 10, 1876. W'm H. Bradley, cl'k.

And also the following deposition:

United States circuit court, northern district of Illinois. In chancery.

PALMER C. SMITH, JOB R. RENICK, ADMINISTRATOR,
vs.
CHARLES C. BONNEY, JAMES C. AYER, ET AL.

and

PALMER C. SMITH, JOB R. RENICK, ET AL.
vs.
CHARLES C. BONNEY, FIRST NATIONAL BANK of Westboro', et al.

The deposition of Palmer C. Smith, taken before me, James Hewitt, a notary public in and for the county of Cook and State of Illinois, by agreement of the parties hereto, on the part of the complainants in this cause, on the 13th day of July, 1876, at the office of Goudy, Chandler and Skinner, Chicago, Illinois.

I certify that the above witness, after being by me first duly sworn, was examined by M'r Miller, and testified as follows, the signature of said witness being waived by consent.

[SEAL.] JAMES HEWITT,
Notary Public.

205 Direct examination by M'r Miller:

Q. What is your name and where do you reside?
A. Palmer C. Smith. State of Ohio.
Q. What is your occupation?
A. Lawyer.
Q. You are one of the complainants in this case?
A. Yes, sir.
Q. Did you know Thomas T. Renick in his lifetime?
A. I did. I knew him for about twenty-nine years.
Q. Were you his attorney in his lifetime?
A. I have been his attorney for eighteen years, perhaps.
Q. Have you been the attorney of his estate in Ohio since his death?
A. I have.
Q. Has there been any other attorney in the State of Ohio of that estate?
A. Not to my knowledge.
Q. By a stipulation or from a stipulation signed by the solicitors of the parties to this suit it appears there was an agreement executed by yourself, dated September 12th, 1874, with James B. Goodman, in respect to the payment of two notes executed by Joel D. Harvey and payable to Thomas T. Renick, for $39,250 each. Did you execute that agreement?
A. I did. I executed an agreement of that date. Copy is attached.
Q. Is it attached to the amended bill filed in this case?
A. I think it is. It is attached to some of the papers in the case.
Q. You executed it on the day of its date?
A. Yes, sir.

206 Q. Who was present at the time of its execution and delivery to M'r Goodman?

A. It was executed in M'r Goodman's office, and M'r Fay and myself were present. I do not remember whether any other parties were present or not.

Q. Where was it prepared?

A. I think a paper had been prepared by M'r Fay, and I either altered that or prepared another one at that time in M'r Goodman's office.

Q. Was M'r Fay acquainted with the contents of that agreement at that time?

A. He was present at the time it was read over.

Q. So that he knew the contents of it?

A. I guess so.

Q. Those notes appear to have been given as part of the purchase-price for the southwest quarter of section 10, township 39, the property described in the bill of complaint, the title of which was in Job R. Renick; had Job R. Renick, at the time of the conveyance of the property to Joel D. Harvey, any beneficiary interest in the property?

A. He held the legal title in trust.

Q. He had no beneficiary interest?

A. No; none whatever.

Q. Thomas T. Renick was then living, was he, July 15, 1872?

A. Yes, sir. Thomas T. Renick died in August, 1873.

Q. What interest had Thomas T. Renick in this property, if any?

A. Thomas T. was one of the devisees of Renick Huston.

Q. What other interest had he in this property?

207 A. He had no other interest.

Q. Had he advanced any money for the purpose of clearing the title of this property?

A. Thomas T. became administrator of Renick Huston; Renick Huston died in February, 1864, I think; the property was encumbered by tax claims and some judgments; Thomas T. had advanced some money to redeem it from those tax claims and those judgment liens; I don't know the exact amount—some twenty or twenty-five thousand dollars; but it had all been, from the sales of the property, refunded to him, or paid to him out of the sales of the property prior to the—I was going to say prior to the sale to Harvey, but probably that was a part of it; I will say prior to the falling due of any of these notes.

Q. Had all the advances which had been made by Thomas T. Renick, which he had made on account of this property, being repaid to him at the time of his death?

A. Yes, sir.

Q. Who was the owner of these notes at the time of his death—these two notes of $39,250 each, about which this controversy exists?

A. I understood they belong to Renick Huston's estate.

(Counsel for defendant objected to this answer.)

Q. Were you the attorney of that estate?

A. Yes, sir; I was attorney for that estate.

Q. How did you understand the estate of Renick Huston was the owner of these two notes?

(Objected to.)

208 A. Well, I have been attorney for Renick Huston's estate and attorney for Thomas T. Renick, and my knowledge was derived from my knowledge of the business generally connected with those two estates. I was familiar with the estates from the death of Renick Hus-

ton. I drew Renick Huston's will, and also drew the will of Thomas T. Renick.

Q. Were you the confidential attorney, then, for both of these parties?

A. Yes, sir; Thomas T. Renick was the executor of Renick Huston's will.

Q. Was any other person than the estate of Renick Huston interested in these two notes?

A. No, sir.

Q. Did Mr. Fay know the fact that these two notes belonged to the estate of Renick Huston as early as September 12, 1874?

A. I notified M'r Fay what we claimed for; that is when I say we, as the administrator and so forth of Renick Huston, Job R. Renick, the other administrator of Renick Huston, was present when we notified him to that effect at one time.

Q. When was that?

A. Prior to September 12, 1874; I cannot say the exact date.

Q. Had you given M'r Fay—were you acquainted with the firm of B. F. Renick and Co.?

A. Yes, sir.

Q. Was that firm in existence at the time of the death of Thomas T. Renick?

209 A. It was formed—I can't state when that was formed, but it was formed after his death some time.

Q. They were doing business in the way of manufacturing chromatic printing presses at Canton, Ohio?

A. Yes, sir.

Q. Had you given M'r Fay any instructions with reference to allowing any of the property of the estate of Renick Huston to go into that firm prior to September 12, 1874?

A. I had notified them that no part of it would be permitted to go there.

Q. That no part of the property of the estate of Renick Huston should not be permitted to go there?

A. Yes, sir.

Q. How early did you notify them to that effect?

A. I can't fix the date, but I know it was prior to September 12, 1874.

Q. Where was it?

A. Here in Chicago. I wrote to them also that no part of it must go there. I hadn't a copy of that letter with me, however.

Q. Was that before these notes were negotiated to J. C. Ayer and Co. and the Westboro' Bank?

A. Yes, sir.

Q. Where did you first learn the fact that these notes had been negotiated to J. C. Ayer and Co. and the Westboro' Bank?

A. I learned that fact when I was here last winter, when these suits were brought. I first learned the fact that they had been negotiated ten days or two weeks prior to that time. I came up here as soon as I could get away from home after I learned the fact.

Q. And after you learned that, you came up to Chicago and learned that they had been negotiated to these parties?

A. Yes, sir.

Q. Then you had these suits brought?

A. Right away.

Q. Had you ever consented to the negotiation of these notes to any party?

A. No, sir.

Q. Did you know that one of them had been placed in New York of B. F. Renick?

A. No, sir.

Q. Where did you suppose the notes were?

A. I suppose they were here in Chicago, in the possession of M'r Fay.

Q. Had you ever given any authority, either to M'r B. F. Renick or M'r Fay, for the delivery of them to B. F. Renick?

A. No, sir; M'r B. Renick came to me to get my consent and I refused.

Q. You did not give your consent?

A. No, sir.

Q. It appears from the stipulation signed by the solicitors of these parties that M'r B. F. Renick executed an agreement in relation to these notes for extending the time of paying them, which was also placed in the hands of James B. Goodman, executed in February, 1875, but dated back to the 12th of September, 1874; when did you first learn of the existence of such an agreement?

211 A. Not until long after it was executed; I think not until the commencement of these suits; I can't fix that date.

Q. You did not learn of it until after the commencement of these suits?

A. I think not; certainly not until long after the execution of the instrument.

Q. You have no recollection of knowing the fact before these suits were commenced?

A. No; I have no recollection of knowing that until after these suits were commenced?

Q. The first agreement you signed you signed as one of the administrators, de bonis non, with the will annexed of Renick Huston, and as the attorney of the estates of Thomas T. Renick; were you the attorney of the estate of Thomas T. Renick at that time?

A. I was.

Cross examination by M'r Goudy:

Q. M'r Smith, you say M'r Job R. Renick held the land in trust; was there any written declaration of trust or agreement showing that trust?

A. No other signed; M'r Fay drew one up, but it was never signed.

Q. Then there was no written paper showing the trust?

A. No.

Q. No evidence of it in writing?

A. No evidence of it, I think.

Q. You think that Job R. Renick held it in trust?

A. It was at my instance it was bid off by him in trust, and I
212 explained the matter to him when I went back to Circleville and wanted to get him to accept the trust.

Q. Were you present at the sale?

A. I was not present at the sale, but an arrangement was made prior to the time of the sale that it should be bid off by him.

Q. Who was that arrangement made with?

A. Thomas T. Renick was here, and M'r. Bonney, M'r Fay, and myself; I don't remember anybody else.

Q. Who were you acting for?

A. I was acting for Thomas T. Renick, and for the——for Thomas T. Renick as the executor of Renick Huston.

Q. Then, if I understand you correctly, there was some talk between you and Thomas T. Renick and M'r Bonney and M'r Fay, prior to the time that M'r Job Renick had any title, in regard to putting the title in Job Renick; is that correct?

A. Yes, sir; that is correct; it was put in his name in order to facilitate the——

Q. I didn't ask you what it was.

M'r Miller:

Go on, and state.

M'r Goudy:

I object to that.

Q. How long before the title was placed in Job Renick was the arrangement made that you refer to?

A. I can't state exactly, M'r Goudy; the arrangement was made when I was here, but the compromise or settlement of the various cases
213 before the sale. The sale was had afterwards. It might have been four weeks, and it might have been longer.

Q. Was a litigation pending in regard to the land?

A. Yes, sir.

Q. Were not the lands encumbered, and were not the titles defective?

A. The lands were encumbered.

Q. Wasn't there a controversy about the title to the land?

A. The lands were encumbered by tax titles and by some judgments against Andrew Huston, the father of Renick Huston. Miss Marsh a legatee of Renick Huston, and had a suit to compel the payment of her legacy.

Q. What sale do you refer to?

A. As a part of the arrangement in settlement between the pending parties it was agreed that there should be a judicial sale of the premises. That is the sale to which I refer at which Job Renick bought.

Q. Who was the seller at that sale? Identify the sale in some way.

A. It was sold in one of those cases. There was a Doctor Dyer that represented a lot of the claims. Anna Marsh was a claimant under a legacy, and the sale was made in one of those cases.

Q. Was not a sale and a decree made in favor of Anna Marsh by Rosenthal, the administrator of Dyer Huston?
214 A. I can't say that, M'r Goudy. I never saw the record of it. I was here representing the case, but I was not here at the sale.

Q. Was there any money paid at the sale within your knowledge?

A. I was not here at the sale.

Q. So you can't answer?

A. At the time of the sale, however, Thomas T. Renick held by the claims by purchase. I think he paid twenty thousand dollars for the whole thing, for the judgments and tax claims, and Anna Marsh's claim was in addition.

Q. Now, you have stated in your examination-in-chief that two notes, each for $39,250, made by Harvey to Thomas T. Renick, were owned by the estate of Renick Huston were not these notes payable to Thomas T. Renick?

A. Yes, sir.

Q. Was not Benjamin F. Renick the executor of Thomas T. Renick?

A. Yes, sir.

Q. What do you mean when you say they were owned by the estate of Renick Huston?

A. They were given for property that belonged to the Renick Huston estate.

Q. That is, you mean to say that these 80 acres on section 10, which has been mentioned, belonged to the Renick Huston estate and was sold to Harvey and these notes were given for it?

A. Yes, sir.

Q. And from those facts you say they were owned by the estate of Renick Huston?

215 A. Yes, sir.

Q. You have stated that you went back to Ohio and had a talk with Job R. Renick in regard to taking the land in trust. Was that talk before the title was put in him or afterwards?

A. I think it was afterwards. We made this arrangement at Chicago, but it was before the sale.

Q. Who was present at that conversation?

A. Between Job and myself?

Q. Yes.

A. No one but Job and myself.

Q. Wasn't there some money to be paid on this sale by somebody to somebody according to the arrangement that was made?

A. There was money paid to the holders of these claims.

Q. Money to be paid?

A. Yes, sir, to the holders of these claims; but whether it was paid at the time of the sale or not I can't answer. I think there was some money paid before the sale, and an extension of time, and some paid afterwards. I can't answer exactly.

Q. Who was to pay that money, according to the arrangement that was made?

A. Well, Thomas T. Renick represented the entire Huston estate, and he was to pay that money.

Q. Had the Renick Huston estate any money in his hands out of which he could pay it?

216 A. No, sir; nothing but what was derived from this property.

Q. Then by the arrangement he was expected to advance that money, was he not?

A. By the arrangement he was to pay the money, but he had no resources except this property that belonged to the estate. When I speak of "this property" I speak of the property about Chicago—other property in addition to this particular tract.

Mr. Skinner:

Q. Now, M'r Smith, you said prior to the sale of this property to Harvey, Thomas T. Renick had made some advances; what were these advances he had made?

A. In amount?

Q. Yes; what was the amount and how did the advances come to be made?

A. My recollection is that the amount was somewhere in the neighborhood of twenty thousand dollars altogether that he advanced.

Q. To whom?

A. For the benefit of the estate in paying off these various claims.

Q. Which estate?

A. Renick Huston's estate. You see there was one claim of Anna Marsh; that were five thousand dollars. There was this claim, these judgments; there was several judgments all together, but they had been collected in the hands of a single person.

Q. But he had advanced, according to your belief, about twenty thousand dollars prior to the sale to Harvey?

217 A. I can't say it was advanced prior to that time, but I think it was.

Q. You afterwards stated that prior to the sale to Harvey, M'r Thomas T. Renick had been reimbursed for all these advances; how do you know he was reimbursed?

A. Well, there had been a large amount of property sold.

Q. Did you ever see any of the reimbursements?

A. Yes, sir; he brought some of the money home to help to pay these claims. I helped to make the calculations.

Q. Just how was Thomas T. Renick reimbursed for those advances?

A. Proceeds of the sale of the land. There was one tract of land known as the Rosehill property.

Q. To what estate did that property belong?

A. To the Renick Huston estate.

Q. Did you see the proceeds paid over to Thomas T. Renick?

A. Yes, sir; he told me that he got it.

Q. The only knowledge you have that he got it was by being told so?

A. By himself.

Q. How much did he ever tell you that he had got?

A. He told me the amount they had sold for. I think it was somewhere in the neighborhood of fifty thousand dollars.

Q. How much did he tell you he received?

A. I can't tell that now. I know, however, that out of the proceeds of the sales of these lands that belonged to that estate he made

218 some loans after these advances had been repaid, and consulted me about making these.

Mr. Miller:

Q. Borrowed them from the estate?

A. Out of the proceeds of the estate he made some loans, and consulted me about making them.

Q. Loans to himself?

A. And to other parties.

Mr. Skinner:

Q. Weren't those transactions for the Harvey sale after the Harvey sale?

A. I can't exactly say; but I think some were before the Harvey sale and some afterwards: but there was thirty-nine thousand dollars cash in hand from the Harvey sale.

Mr. Miller:

Q. Who got that?

A. Thomas Renick got that, of course.

Mr. Skinner:

Q. Now, as between Thomas T. Renick and any other interested parties, have you any knowledge of an actual settlement of these advances?

A. The matter and his accounts as he died was settled with the probate court. There never was any settlement between them.

Q. There never was?

A. No, sir.

Q. And that is the only way that you know it?

A. Yes, sir; that he got money, and out of it he made loans to other parties.

Q. But you also state you couldn't tell how much money he received?

A. No, sir; I couldn't tell.

219 Q. Further on in your examination you state that the estate of Renick Huston were the legal owners of these notes, and that you knew they had a claim to these notes by reason of your familiarity with the affairs of the estate of Renick Huston and of Thomas T. Renick; now, was not the interest of Thomas T. Renick in the estate of Tower, Claassen and Co. continued after his death?

A. The will disposes of it.

Q. Well, as a matter of fact, was not Thomas Renick's interest in the firm of Tower, Claassen and Co. continued after his death?

A. I hardly know how to answer that, M'r Skinner.

Q. You can tell whether you know or not?

A. Ben. Renick went right in. I know the will provided—gave it to Ben. Renick, and to nine of his nephews and his nieces, making ten shares of it, and gave his interest in that concern in trust to Ben. and these other nine nephews and nieces.

Q. You was counsel, you state, for the estate of Thomas T. Renick?

A. Yes, sir.

Q. Now, as counsel, and from the familiarity you had with his affairs and his estate, don't you know whether his interest in the firm of Tower, Claassen and Co. was continued?

A. I know that Ben. went along in that shape.

Q. Don't you know that his interest was continued?

A. That is a legal question I can't answer.

Q. Was not his interest as a copartner continued?

220 A. There was no dissolution, no settlement of the firm transactions.

Q. After Thomas T. Renick died, did you act as attorney or have any knowledge of the details of the business of the old firm of Tower, Claassen & Co., or of B. F. Renick and Co., succeeding it?

A. I have had a limited knowledge of the business of Tower, Claassen and Co.; I had scarcely any knowledge of the business of B. F. Renick and Co.

M'r Goudy:

Q. You have spoken of other tracts of land, one of them called the Rose Hill tract of land; were those different tracts of land about Chicago that you have mentioned all in Job R. Renick?

A. Yes, sir; the whole.

Q. So that whatever arrangement was made about one was made about all?

A. Yes, sir.

Q. Did Thomas T. Renick ever make any report or statement in writing of the estate of Renick Huston, showing that he held or managed these lands in trust?

A. No, sir; I don't think he ever did.

Q. So far as the records in Ohio are concerned there is no written evidence there of any statement by Thomas T. Renick showing that Renick Huston owned this land and that Job Renick held them in trust?

A. No, sir; there is no record there one way or the other; the
221 records simply show the appointment of Thomas T. Renick as the executor of Renwick Huston; the records don't show anything about it.

Q. Now, in the sale of the land to Joel D. Harvey the notes were taken by Thomas T. Renick as an individual?

A. Yes, sir.

Q. Now, were the notes which he obtained on the sale of other lands taken in the same way?

A. I don't know that, M'r Goudy; these notes were drawn by M'r Fay.

Q. Did you ever see any note or paper relating to the sale of these lands that alluded to the estate of Renick Huston?

A. That I cannot answer, because I always understood——

Q. I want to know if you ever saw any such paper.

A. I can't answer you that, whether I ever did or not.

Q. Thomas T. Renick told you that he had received out of the proceeds of these lands enough to pay him for the advances he had made?

A. I can't state it in that language, M'r Goudy; but I understood from him he got his money all back and more too.

Q. Did he ever make any settlement with you as the executor of Renick Huston's estate?

A. No, sir. I was not administrator until Thomas Renick's death; Tom Renick was executor and I was afterwards appointed administrator de bonis non, with the will annexed.

222 Q. You have spoken of claims that were paid by Thomas T. Renick and which were involved in suits; were these claims against Thomas Renick's estate or Andrew Huston's?

A. Against Andrew Huston's estate.

Q. And these liens which you speak of were liens against the land by Andrew Huston, were they not?

A. Where they were judgments they were, but where they were tax claims I can't answer without an examination of the records.

M'r Skinner:

Q. Prior to Thomas T. Renick's death, what were your professional relations, if any, to the estate of Andrew Huston and to the estate of Thomas T. Renick?

A. I was generally the attorney for Thomas and Thomas was the executor of Renick Huston and administrator, with the will annexed, of Andrew Huston.

Q. The only professional relation you had to the estate prior to Thomas Renick's death was the fact of your being attorney for him as administrator?

A. Yes, sir; prior to Thomas Renick's death.

Q. Then prior to Thomas Renick's death, as you were only attorney to him as administrator for those two estates, there could not have been any settlement between you and him with reference to any advances he made in the matter?

A. No settlement between him and me.

223 Q. But you would have been the proper person to settle with?

A. I was entirely familiar with the estates.

Q. If he had made any such settlement you would have been apt to know it as his professional adviser?

A. Of course I would.

Q. But you don't know of any such settlement, you say?

A. I don't know of any; if he had made any I should have known of it.

Q. For what purpose was the title placed in Job Renick?

(Objected to. Question withdrawn.)

(Endorsed:) Filed July 15, 1876. W'm H. Bradley, cl'k.

Complainants thereupon read in evidence the following stipulation:

United States circuit court, northern district of Illinois.

PALMER C. SMITH ET AL.
v.
JAMES C. AYER ET AL.

SAME
v.
FIRST NATIONAL BANK OF WESTBORO', MASS.

It is hereby admitted, as a part of the evidence in the above-
224 entitled causes, that the agreement signed by P. C. Smith, one of the adm'r' and attornies for the estate of Ren. Huston and Tho's T. Renick, and dated Sept. 12th, 1874, a copy of which is attached to the answer of Henry H. Porter, William H. Ferry, and James B. Goodman, trustee, et al., was delivered to James B. Goodman, at his office in Chicago, on the day of its date, and has been with said Goodman ever since and is now in the possession of said Goodman, and that said agreement or said copy may be read in evidence without objection as to form. It is further stipulated, as aforesaid, that the further agreement, a copy of which is attached to said answer and which agreement is dated September 12th, 1874, and signed by Benj. F. Renick, executor of the last will of Thomas T. Renick, deceased, was executed on or about the first day of February, A. D. 1875, and delivered to said Goodman on or about said last named day and has ever since been in the possession of said Goodman, and that said agreement or said copy may be read in evidence without objection to form.

Dated Chicago, July 12, 1876.

GOUDY, CHANDLER AND SKINNER,
Attorneys for Def'ts J. C. Ayer & Co. and the First National Bank of Wastboro'.
MILLER AND FROST, *Sol's for Compl'ts.*

(Endorsed:) Filed July 15, 1876. W'm H. Bradley, cl'k.

225 Complainants thereupon read in evidence, subject to the objection of the defendants as to competency, the following contract:

"Whereas Joel D. Harvey did heretofore execute among other things two promissory notes bearing date July 15th, 1872, for the sum of $39,250.00 (thirty-nine thousand two hundred and fifty dollars) each, payable respectively to the order of Thomas T. Renick in two & three years after the date thereof, which notes were given as a part consideration for the sale of the W. ½ of the S. W. ¼ of sec. 10, 39, 13 (except so much as had been before conveyed & was used for a railroad), situate in the county of Cook & State of Illinois, & which notes are now the property of the estate of Renick Huston; dec'd; and whereas there is a suit now pending in the court of common pleas of Pickaway County, Ohio, affecting the property of said estate; and whereas it is desirable to the interest of said estate that said money sh'd be invested until the termination of said suit, and whereas the West Chicago Land Company have assumed the payment of said notes together with the interest thereon, & the said West Chicago Land Co. desires a postponement of the payment of both the s'd notes for a time:

"Now therefore I, P. C. Smith, of the said county of Pickaway &

State of Ohio, one of the adm'rs de bonis non with the will an-
226 nexed of said Renick Huston, & att'y for said estate, do hereby say that I will not press the payment of said two notes until such time as I shall require the s'd money to be paid by reason of the termination of the said suit; the extension of the time of the payment of said two notes shall not in any event be for a time exceeding two years upon each of said notes from the time when each of the said notes respectively become due & payable by the written terms thereof; and further the said maker of s'd notes or the said West Chicago Land Co. are to pay interest upon the amount of said notes at the rate of eight p'r cent. per annum, payable annually."

And I hereby consent that the trustee in the trust deed securing the payment of the said notes may release therefrom the south forty acres from the said trust upon the said Harvey or the s'd West Chicago Land Co. furnishing to him to hold as collateral security for the payment of said notes in addition to the security of said trust deed, upon the residue of said tract of land in said trust deed conveyed, notes (together with the deed of trust securing the same) of the individuals with whom the said West Chicago Land Co. have made a contract for the sale of the said south forty acres or thereabouts for the sum of ninety-six thou-
sand (96,000$) dollars, to become due one-half July 15, 1876, &
227 one-half July 15, 1877, with interest payable annually at the rate of 8 p'r c. p'r annum, secured by deed or deeds of trust upon the s'd lands, & shall furnish to said trustee for examination a proper abstract of the title showing a good title in said individuals, the makers of said collateral notes, at the time of their being so given to s'd trustee & the release being made. It is understood that the s'd Joel D. Harvey, or said West Chicago Land Co., upon the payment of all unpaid purchase-money for s'd premises, together with all the accrued & accruing interest thereon, except the principal of the 2 notes above-mentioned, are entitled to & shall have a release of 20 acres of said land from the said trust deed in addition to s'd forty acres to be released upon the conditions hereinbefore set forth or provided for in s'd deed of trust made by s'd Joel D. Harvey.

Sept. 12, 1874.

P. C. SMITH,
One of the Adm'rs & Att'y for the Estate of Ren. Huston & Tho's T. Renick.

The complainants then read in evidence the following stipulation:

In the circuit court of the United States for the northern district of Illinois.

IN RE PALMER C. SMITH ET AL.
v.
J. C. AYER ET ALS.

228 PALMER C. SMITH ET AL.
v.
THE FIRST NATIONAL BANK OF WESTBORO' et als.

It is hereby stipulated in the above entitled causes that the 24 notes for the sum of $4,000 each, aggregating the sum of $96,000, are in the hands and custody of J. Edwards Fay pursuant to the recitals contained

in the agreement of Benjamin F. Renick, dated Sept. 12th, 1874, and to the receipt dated July 21st, 1875, given to Henry H. Porter, William H. Ferry, and James B. Goodman, as trustees of the West Chicago Land Company, and copies of which are attached to the answers of said Porter, Goodman, Ferry, and Campbell, to which reference is made for a more full statement thereof; and it is further stipulated that said complainants have leave to amend their bills by inserting the name of Joel D. Harvey in the place of that of James B. Goodman, in the statement relating to the paper alleged by him to have been left with said Goodman on the 12th Sept., 1874.

GOUDY, CHANDLER & SKINNER,
Att'ys for Defendants J. C. Ayer & Co.
& the 1st Nat'l Bank of Westboro'.

(Endorsed:) Filed July 15, 1876. W'm H. Bradley, cl'k.

229 The complainants then read in evidence the letters of administration to Palmer C. Smith and Job R. Renick with their authentication, and the copies of the proceedings of the court containing the resignation of B. F. Renick as executor of the estate of Thomas F. Renick and the appointment of Edward J. Van Meter in his place, and the letters of administration to Edward J. Van Meter, which are heretofore set out in this record on page 20 et seq., and page 109 et seq., respectively.

230 Defendants thereupon read in evidence the following:

Statement of evidence of William C. Goudy, to be used at the trial of this case.

United States circuit court, northern district of Illinois.

PALMER C. SMITH AND JOB R. RENICK, administrators de bonis non with the will annexed of Renick Huston, deceased,
v.
CHARLES C. BONNEY, J. EDWARDS FAY, Charles W. Griggs, Benjamin F. Renick, Benjamin F. Renick, executor, &c., James C. Ayer, Frederick Ayer, Albert G. Cook, Joel D. Harvey, Henry H. Porter, W'm H. Ferry, and James B. Goodman, trustees of West Chicago Land Company, George C. Campbell, Anthony McElroy, Edward L. Davidson, Charles B. McElroy, and John J. McElroy.

The firm of Tower, Classen & Co., manufacturers of chromatic-printing presses at Canton, Ohio, mentioned in the will of Thomas T. Renick, became the firm of Benjamin F. Renick & Co.; that is, Benjamin F. Renick & Co. were the successors of Tower, Classen & Co. in conducting the same business, the only change being in the membership and name of the firm.

231 In the month of May, 1875, the said firm of Benjamin F. Renick & Co. applied to Josiah H. Reed, a loan broker in the city of New York, for the purpose of obtaining a loan of about $40,000, and the said Josiah H. Reed made application in their behalf to James C. Ayer

& Co., of Lowell, Massachusetts. The said firm of Benjamin F. Renick & Co. proposed to secure the said loan by pledging as collateral security a note dated July 15th, 1872, executed by Joel D. Harvey, of Chicago, secured by a deed of trust on the west half of the southwest quarter of section ten, township thirty-nine north, range 13 east, of 3d principal meridian.

The said James C. Ayer & Co., which was a firm composed of James C. Ayer, Frederick Ayer, and Albert G. Cook, defendants in this suit, agreed to lend to said B. F. Renick & Co. the sum of $39,250 for the term of two years, with interest at the rate of ten per cent. per annum, payable semi-annually, and to accept as collateral security thereto the said promissory note of Joel D. Harvey if the said security was approved by me.

For the purpose of submitting the matter to my judgment the application was sent to John H. Avery, of Chicago, an associate in business of said Josiah H. Reed, and the said B. F. Renick came to Chicago.

I examined the two promissory notes, each for the sum of $39,250, dated July 15th, 1872, executed by the said Joel D. Harvey and
232 payable to Thomas T. Renick. I also examined the deed of trust securing said notes and an abstract of title of the land described in said deed, and also a copy of the will of Thomas T. Renick, and also talked with the said Benjamin F. Renick and J. Edwards Fay, the trustee under said trust deed. The said notes I found to be in the possession of Benjamin F. Renick as executor and trustee of Thomas T. Renick.

The said Benjamin F. Renick informed me that he wished to use the money borrowed in the business of Benjamin F. Renick & Co. as manufacturers of chromatic printing presses, and that the said establishment was the same designated in the will of Thomas T. Renick as the one controlled by Tower, Classen & Co. The said notes when produced at that time, which was in the month of May, 1875, each contained this entry on the back of same, to wit:

CHICAGO, *February 19th*, 1875.

Payment of the within note extended as per contract of September 12th, 1874, now in the hands of James B. Goodman, esq., for a period not exceeding two years from July 15th, 1874.

J. EDWARDS FAY,
Trustee, &c.
B. F. RENICK,
Executor and Trustee of Tho's T. Renick, dec'd.

The said Benjamin F. Renick also produced to me certified
233 copies of the letters testamentary to him issued by the probate court of Pickaway County, Ohio, showing him to be the executor of Thomas T. Renick, deceased.

I apprised said James C. Ayer & Co., through John H. Avery and Josiah H. Reed, that the security on the land described in the trust deed was sufficient and valid to secure the payment of said two notes of $39,250 each, and also advised them to take the one which first fell due in preference to the other. Immediately afterwards I was directed by James C. Ayer & Co. to complete the said loan by taking the note of Benjamin F. Renick & Co., for the sum of $39,250, payable on the 15th day of July, 1877, bearing interest at ten per cent. per annum, payable semi-annually on the 15th of July and January in each year. The said note, principal and interest, payable at the office of James C. Ayer &

Co., Lowell, Massachusetts, and to accept the said note for $39,250, executed by the said Joel D. Harvey, first falling due, for, in my opinion, the same was well secured by the trust deed, and the title in said trustee was good. They also sent to me said sum of $39,250, to be paid to said Benjamin F. Renick & Co. on the completion of said transaction in the manner which should be satisfactory to me. I received the said sum of money and took the note of Benjamin F. Renick & Co., dated May 26, 1875, payable to the said James C. Ayer & Co., at their office, Lowell, Massachusetts, for the sum of $39,250, with interest at the rate of
234 ten per cent. per annum, payable semi-annually on the 15th of July and January in each year, and to secure the same, accepted the note of Joel D. Harvey, dated July 15, 1872, payable on the face two years after the date thereof, but extended by endorsement on the back for a period not exceeding two years from the 15th day of July, 1874, for the sum of $39,250, and required an endorsement to be made thereon by Benjamin F. Renick as executor and trustee of Thomas T. Renick, deceased, which endorsement and assignment he made.

I also required the said Benjamin F. Renick & Co. to procure a paper admitting that the said note of Harvey was good and had no valid defence thereto, signed by the said Joel D. Harvey and the trustees of the West Chicago Land Company, which the said Benjamin F. Renick did obtain and deliver to me for James C. Ayer & Co. Upon the payment of the amount $39,250 to said Benjamin F. Renick he delivered to me the principal note for said amount; said note of Harvey, as security, assigned as aforesaid as security; a copy of the trust deed to Fay and an admission that the collateral note was good and valid, and I sent the whole of these papers immediately to James C. Ayer & Co., to Lowell, Massachusetts. The transaction was concluded on the first day of June, 1875.

235 The defendants, James C. Ayer, Frederick Ayer, and Albert G. Cook, had no information whatever in regard to the title to the said tract of land described in the deed of trust; and they had no information in regard to the ownership of said note executed by Harvey, and delivered as collateral security. The whole matter was entrusted exclusively to my judgment, and I made the only examination that was made in the premises. I had no information or suspicion that Renick Huston or his executors, administrators, heirs, or representatives had any interest whatever in the said note pledged as collateral, or in the land which was given as security for said note. The abstract showed that the land had once belonged to Renick Huston, but it also showed that the title of Renick Huston had passed by an administration sale, and a sale under a decree of the United States court to Job R. Renick, and I had no information whatever that the said Job R. Renick held the same in trust for the benefit of any other person than himself.

I informed J. C. Ayer & Co. that the title to said note was legally transferred to them by the assignment of Benjamin F. Renick, as executor and trustee of Thomas T. Renick, and that they had a complete right and title thereto as collateral security to the note executed by Benjamin F. Renick & Co., and that said Benjamin F. Renick,
236 as such executor and trustee, had the right to use the said note as such collateral security, and that the said note of Harvey was properly secured by the deed of trust on the land.

This, in substance, was all the information I gave them, and all the information which they had. I never heard of any claim to said note, or the proceeds of the land described in the deed of trust to Fay, by any other person than Thomas T. Renick and the representatives of his

estate till the bill was filed in the present case. On the contrary, I was informed by said Benjamin F. Renick and J. Edwards Fay, the trustee, that the said Benjamin F. Renick had the complete control of said note, and the right to use it as collateral security to said loan. I was also informed by said Benjamin F. Renick and said Fay that the firm of Benjamin F. Renick & Co. was perfectly responsible for the amount of said loan independent of said collateral security and that they were able to pay the interest when it accrued and the principal when it matured without question. I was also informed by M'r Avery that M'r Reed had made examinations in New York, where Benjamin F. Renick & Co. were well known, as to their financial condition and credit, and that they were reported by responsible banks, with whom they dealt, to be perfectly responsible for any debt they would contract; and such was,
237 in fact, the reputation of the firm of Benjamin F. Renick & Co. at that time in New York and at Canton, Ohio, where they did business. But it has since turned out that at that time they were in a failing condition, and have since failed and gone into bankruptcy.

W. C. GOUDY.

The foregoing statement is to be received as the testimony of William C. Goudy the same as if given in a deposition, and no objection is to be taken to any part of it because not in the personal knowledge of the witness.

MILLER AND FROST,
Sol'rs for Complainants.

When I was examining the matter mentioned in the foregoing statement and before the loan was complete, there was shown to me by B. F. Renick a duplicate or copy of the agreement dated Sept. 12, 1874, signed by Benj. F. Renick, executor of the last will of Thomas T. Renick, deceased, and with a stipulation thereto appended signed by J. Edwards Fay, trustee, &c., which I examined, but I did not see a paper or copy of the one of same date signed by P. C. Smith, one of the adm'rs and attorney for the estate of Renick Huston and Tho's T. Renick, and never heard of it until since this suit was commenced.

W. C. GOUDY.

(Endorsed:) Filed July 15, 1876. W'm H. Bradley, cl'k.

238 Defendants thereupon read in evidence the following contract:

Whereas Joel D. Harvey, of Chicago, Illinois, did heretofore execute among other things two certain promissory notes, bearing date the 15th day of February, A. D. 1872, each for the sum of thirty-nine thousand two hundred and fifty dollars ($39,250), each payable respectively to the order of Thomas T. Renick in two and three years after the date thereof, which said notes were given as a part of the consideration for the sale of the premises, situate in the county of Cook and State of Illinois, known and described as the W. ½ of S. W. ¼ of sec. 10, T. 39 N., R. 13 E. of 3d P. M., except so much thereof as had before been conveyed to the Galena and Chicago Union (now the Northwestern Railway Company) for a right of way; and

Whereas the said Thomas T. Renick had deceased since the said notes were given, and by reason of divers matters and things connected with his estate the said estate cannot be settled for a very considerable time, and it is for the interest of his estate that the said money to become and

having become due upon said notes shall be invested until it shall be required for the final settlement of the said estate; and

Whereas the said West Chicago Land Company have assumed the payment of the said notes, together with the interest thereon, and the said West Chicago Land Company desires a postponement of both the said notes for a time:

239 Now, therefore, I, Benjamin F. Renick, of the county of Pickaway and State of Ohio, the sole executor of the last will of the said Thomas T. Renick, late of said county of Pickaway and State of Ohio, deceased, do hereby say that I will not press the payment of the said two notes until such time as I shall require the said money to be paid to me to make settlement of the said estate, provided that the extension of the time for the payment of the said two notes shall not in any event be for a period exceeding two years upon each of said notes from the time when each note respectively becomes due and payable by the written terms thereof upon the said notes, and also the said makers of said notes or the said West Chicago Land Company are to pay interest upon the amount of said notes, at the rate of eight per cent. per annum, payable annually on the fifteenth day of July of each and every year till the said notes shall be fully paid.

And I hereby consent that the trustee in the trust deed securing the payment of the said notes may release therefrom the south forty acres of the said tract of land upon the said Harvey or the said West Chicago Land Company furnishing to him to hold as collateral security for the payment of the said notes and interest, in addition to the security of the said trust deed upon the residue of the said premises here-

240 inabove and in said trust deed described (and conveyed by said trust deed to J. Edwards Fay, trustee), notes with proper deeds of trust securing the same of the person or persons with whom the said West Chicago Land Company has made a contract for the sale of the said south forty acres, or thereabouts, for the sum of ninety-six thousand dollars ($96,000), to become due and payable, one-half on the fifteenth day of July, A. D. 1876, and one-half on the fifteenth day of July, A. D. 1877, with interest, payable annually, at the rate of eight per cent per annum, secured by deed or deeds of trust upon the said land, and shall furnish the said trustee for examination a proper abstract of title showing a good title in said individuals, the makers of said collateral notes, at the time of their being so given to said trustee and the release being made.

It is understood that the said Joel D. Harvey and the said West Chicago Land Company, upon the payment of all unpaid purchase-money for said premises, with all accrued interest thereon, except the principal of the two notes above mentioned, are entitled to have a release of twenty acres of said lands from said trust deed to said Fay, in addition to said forty acres, to be released from the conditions herein above and in said trust deed set forth.

Chicago, Sept. 12th, 1874.

(Signed) BENJAMIN F. RENICK,
Executor of the last will of Thomas T. Renick, deceased.

241 In consideration of the above statement and request, I hereby agree to release the south forty acres of the tract above described upon the terms and conditions specified in the foregoing statement.

Chicago, Sept. 12th, 1874.

(Signed) J. EDWARDS FAY,
Trustee, &c.

(Endorsed:) Filed July 15, 1876. W'm H. Bradley, cl'k.

Defendants thereupon read in evidence the will of Thomas T. Renick.

In the name of God, amen.

I, Thomas T. Renick, of Pickaway County, O., being of sound mind and memory, do make and publish this my last will and testament:

1st. I direct that all my just debts be paid.

2nd. I give & devise to my brother, Job R. Renick, all my interest in the home farm where we now reside, it being my desire to keep the said farm in the Renick name and family.

3rd. Whereas I have a large interest in some coal and coke property in Southern Central Illinois, known as the S't Louis Coal and Coke Company and the Sparling Lime Company, the original cost of my interest in said company being $85,000.00, which was paid for out of the funds belonging to myself and my brother Job R.; and whereas I
242 have loaned to said companies the sum of about $10,000.00 to redeem the same from a sale made on execution, the said loan being made out of funds that belonged to myself, my sister Mary Gregg, and the children of my deceased brother, Jonathan Renick. In order to close up said transaction in the most speedy manner, I give and bequeath all my interest in the said companies, together with the sum so loaned by me, as aforesaid, to my brother, Benjamin F. Renick, in trust to collect the money so loaned as soon as practicable, and fast as the same is collected to pay the same over, the ⅓ part thereof to my said sister, Mary Gregg, the ⅓ part thereof to my nephews and nieces, the children of my deceased brother, Jonathan Renick, and the other ⅓ to be disposed of by my said trustee, Benjamin F., as is provided for in the 9th item of this my last will. And I further direct that all my interest in the said property and companies be sold by my said trustee, either at public or private sale, for cash or upon such terms of credit as he in his wisdom shall think best, and the said sum of $5,000.00, together with the interest thereon, shall be refunded or repaid to the firm account of myself and brother Job; that is, giving to Job the ½ part thereof and the residue to be disposed of as is provided for in the 9th item of this my last will and testament.

4th. Whereas I have and hold in my name an interest in the
243 firm of Tower, Classen & Co., manufacturers of chromatic printing presses, which company are manufacturing said printing presses at Canton, Ohio, and which interest was paid for out of funds belonging to myself, ⅓ to my sister, Mary Gregg, and ⅓ to my nephews and nieces, the children of my brother Jonathan Renick, dec'd.

It is my request that the whole interest in said cempany be held and retained so long as my brother Benjamin F. Renick may, in his discretion, think the same will be profitable, and I desire that the same shall be under the control and management of the said Benjamin F.; and as to my interest in the same I desire that it shall be held, controlled, and managed by my said brother Benjamin F., for the benefit of himself and my nephews and nieces, the children of my sister, Catherine Darse, dec'd, the children of my brother Jonathan Renick, dec'd, and Harry R. Gregg, the son of my sister, Mary Gregg, share and share like; and I give and bequeath all my interest in said company to my said brother Benjamin F. Renick, in trust for himself and my said nephews and nieces above named, in equal proportions, to be held, retained, and controlled by my said brother Benjamin F. so long as he in his discretion may deem advisable. My meaning is that each nephew and each niece is to take one share with my brother Benjamin.

5th. I direct that my executor shall pay to my brother Felix
244 Renick the sum of $500 per year, the 1st payment to be made in

one year after my death, and the sum of $500.00 to be paid to him at the end of each and every year thereafter so long as said Felix may live.

6th. I give and bequeath to my beloved mother-in-law, Maria Brown, my gray horse "Doc."

7th. I direct my executor, hereinafter named, to build a good substantial iron fence around the graveyard on the farm belonging to myself and my brother Job R. Renick.

8th. As to the partnership existing between myself and my brother Job, we having kept no accounts of the said partnership as between ourselves, I will and direct that my executor, hereinafter named, in making a settlement of said partnership matters, take the statement of said brother Job; and any statement of said partnership accounts that my said brother Job may make, I will and direct that the same shall be forever binding on my executor, heirs, and legatees, and all of them.

9th. All the rest and residue of my property of every kind and description I give and bequeath to my nephews and nieces, the children of my sister, Catharine Darse, the children of my deceased brother, Jonathan Renick, and Harry R. Gregg, son of my sister, Mary Gregg, share and share alike, giving to each nephew and niece one share.

10th. It is my will, and I do so direct, that the bequests given in the third item of this my will to my sister, Mary Gregg, and to my
245 nephews and nieces, the children of my dec'd brother, Jonathan Renick, shall be taken by them in full satisfaction of their interest in the fund so loaned as is therein stated, and upon the receipt of the same they shall have no claim against me, either in my individual capacity or as trustee.

11th. I hereby nominate and appoint my brother, Benjamin F. Renick, executor of this my last will and testament, and having every confidence in his integrity, I direct that no bond be required of him as such executor.

In testimony whereof I have hereunto set my hand and seal this 1st day of Aug., 1873.

THOMAS T. RENICK. [SEAL.]

Signed, sealed, and acknowledged by Thomas T. Renick as his last will and testament in our presence, and signed by us in his presence and at his request.

P. C. SMITH.
JA'S M. REEVES.

THE STATE OF OHIO,
Pickaway County, ss:

We, P. C. Smith and Ja's M. Reeves, being duly sworn in open court this 12th day of August, A. D. 1873, depose and say that we were present at the execution of the last will and testament of Thomas T. Renick, hereunto annexed; that we saw the said testator subscribe said will, and heard him publish and declare the same to be his last will and testament; and that the said testator at the time of executing
246 the same was of full age and of sound mind and memory, and not under any restraint, and that we signed the same as witnesses at his request and in his presence and in the presence of each other.

P. C. SMITH.
JA'S M. REEVES.

Sworn to and subscribed in open court this 12th day of August, A. D. 1873.

JAMES TAYLOR,
Probate Judge.

I hereby certify the foregoing to be a true copy of the original will of Thomas T. Renick as on file and record in this office.
August 13th, 1873.
[SEAL.] JAMES TAYLOR,
Probate Judge.

(Endorsed:) Filed July 15, 1876. W'm H. Bradley, cl'k.
[SEAL.] H. W. BLODGETT, *Judge.*

(Endorsed:) Filed July 31, A. D. 1876. W'm H. Bradley, clerk.

247 Afterwards, to wit, on the 16th day of August, A. D. 1876, said complainants filed in said clerk's office their bond in appeal in said entitled cause, which said bond is in the words and figures following, to wit:

Appeal bond.

Supreme Court of the United States. In equity.

PALMER C. SMITH AND JOB R. RENICK, ADMINISTRATORS de bonis non with the will annexed of Renick Huston, deceased, and Edward J. Van Meter, administrator de bonis non with the will annexed of Thomas T. Renick, deceased, complainants,
vs.
CHARLES C. BONNEY, J. EDWARDS FAY, Charles W. Griggs, Benjamin F. Renick, James C. Ayer, Frederick Ayer, Albert G. Cook, Joel D. Harvey, and Hary H. Porter, William H. Ferry, and James B. Goodman, trustees of the West Chicago Land Company, and George C. Campbell, Anthony McElroy, Edward L. Davidson, Charles B. McElroy, and John J. McElroy, defendants.

Know all men by these presents that we, Palmer C. Smith and Job R. Renick, administrators de bonis non with the will annexed of Renick Huston, deceased, and Edward J. Van Meter, administrator de bonis non with the will annexed of Thomas T. Renick, deceased, all of Pickaway County, in the State of Ohio, and Henry G. Miller, of Chi-
248 cago, Cook County, Illinois, are held and firmly bound unto Charles C. Bonney, J. Edwards Fay, Charles W. Griggs, Benjamin F. Renick, James C. Ayer, Frederick Ayer, Albert G. Cook, Joel D. Harvey, and Henry H. Porter, William H. Ferry, and James B. Goodman, trustees of the West Chicago Land Company, and George C. Campbell, Anthony McElroy, Edward L. Davidson, Charles B. McElroy, and John J. McElroy, in the sum of one thousand dollars, to be paid to the said Charles C. Bonney, J. Edwards Fay, Charles W. Griggs, Benjamin F. Renick, James C. Ayer, Frederick Ayer, Albert G. Cook, Joel D. Harvey, and Henry H. Porter, William H. Ferry, and James B.

Goodman, trustees of the West Chicago Land Company, and George C. Campbell, Anthony McElroy, Edward L. Davidson, Charles B. McElroy, and John J. McElroy, their executors or administrators, to which payment well and truly to be made we bind ourselves and each of us, jointly, and severally, and our and each of our heirs, executors, and administrators firmly by these presents, sealed with our seals, dated this fifth day of August, A. D. 1876.

Whereas the above-named Palmer C. Smith and Job R. Renick, administrators de bonis non with the will annexed of Renick Huston, deceased, and Edward J. Van Meter, administrator de bonis non with the will annexed of Thomas T. Remick, deceased, have taken an ap-
249 peal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled action by the circuit court of the United States for the northern district of Illinois: Now, therefore, the condition of this obligation is such that if the above-named Palmer C. Smith and Job R. Renick, administrators de bonis non with the will annexed of Renick Huston, deceased, and Edward J. Van Meter, administrator de bonis non with the will annexed of Thomas T. Renick, deceased, shall prosecute their said appeal to effect, and answer all costs if they shall fail to make good their plea, then this obligation shall be void, otherwise to remain in full force and virtue.

In testimony whereof the parties of the first part hereunto affixed their hands and seals the day and year first above written.

PALMER C. SMITH. [SEAL.]
JOB R. RENICK. [SEAL.]
ED. J. VAN METER. [SEAL.]
HENRY G. MILLER. [SEAL.]

Sealed and delivered in presence of—
JOB E. STEVENSON.

Approved.

H. W. BLODGETT, *Judge.*

(Endorsed:) Filed August 16, 1876. W'm H. Bradley, clerk.

250 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true, correct, and complete transcript of the record of all the proceedings had in said court in the cause wherein Palmer C. Smith and Job R. Renick, administrators de bonis non of the estate of Renick Huston, deceased, are the complainants, and Charles C. Bonney et al. are the defendants, as the same appears from the files and records of said court now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office, in Chicago, in said district, this 6th day of October, A. D. 1876, and of our Independence the 101st year.

[SEAL.] W'M H. BRADLEY,
Clerk.

In the Supreme Court of the United States, October term, A. D. 1876.

251 UNITED STATES OF AMERICA:

PALMER C. SMITH & JOB R. RENICK, ADMINISTRATORS de bonis non with the will annexed of the estate of Renick Huston, deceased, and Edward J. Van Meter, administrator de bonis non with the will annexed of the estate of Thomas T. Renick, deceased, appellants,

vs.

JAMES C. AYER, FREDERICK AYER, ALBERT G. Cook, Joel D. Harvey, Henry H. Porter, William H. Ferry, & James B. Goodman, trustees of the West Chicago Land Company, George C. Campbell, Anthony McElroy, Edward H. Davidson, Charles B. McElroy, John J. McElroy, Charles C. Bonney, J. Edwards Fay, Charles W. Griggs, and Benjamin F. Renick, appellees.

And now come the appellants, by Miller and Frost, their solicitors, and say that in the record and proceedings aforesaid there is manifest error in this, to wit:

1st. The court below erred in not rendering a decree in said cause in favor of the complainants for the relief prayed.

2d. The decree of the court below is contrary to equity.

3rd. The court below erred in dismissing the bill of complaint.

By reason whereof the appellants pray that said decree may be reversed.

T. G. FROST,
For Appellants.

MILLER & FROST.

(Indorsement on cover:) No. 221. Palmer C. Smith, Job R. Renick, adm's, &c., of Renick Huston, dec'd, & Edward J. Van Meter, adm'r, &c., of Thomas T. Renick, dec'd, appellants, vs. James C. Ayer, Frederick Ayer, Albert G. Cook, Joel D. Harvey, et al. N. Illinois C. C. U. S. Filed 11th October, 1876.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1878.

No. 221.

PALMER C. SMITH and JOB R. RENICK, Administrators of Renick Huston, deceased, and EDWARD J. VANMETER, Administrator, &c., of Thomas T. Renick, dec'd, *Appellants,*

—*vs.*—

JAMES C. AYER, FREDERICK AYER, ALBERT G. COOK, JOEL D. HARVEY et al. *Appellees.*

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

Brief and Argument on Behalf of Appellants.

MILLER & FROST, ATT'YS FOR APPELLANTS.

CHICAGO:
PRESS OF BEACH, BARNARD & CO., LEGAL PRINTERS, NO. 104 RANDOLPH STREET.
1879.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1878.

No. 221.

PALMER C. SMITH and JOB R. RENICK, Administrators of Renick Huston, deceased, and EDWARD J. VANMETER, Administrator, &c., of Thomas T. Renick, dec'd, *Appellants*,

—*vs.*—

JAMES C. AYER, FREDERICK AYER, ALBERT G. COOK, JOEL D. HARVEY et al. *Appellees.*

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

STATEMENT OF CASE.

This case is brought here by appeal from a decree of the Circuit Court of the United States, for the Northern District of Illinois, dismissing appellants' bill of complaint for want of equity.

The bill of complaint was filed in the Superior Court of Cook County, Feb. 3, 1876, by Palmer C. Smith and Job R. Renick, as administrators, *de bonis non* with the will annexed of the estate of Renick Huston, deceased, against Charles C. Bonney, J. Edwards Fay and Charles W. Griggs, composing the firm of Bonney, Fay & Griggs, Benjamin F. Renick, and Benjamin F. Renick as executor

of the estate of Thomas T. Renick, deceased, James C. Ayer, Frederick Ayer and Albert G. Cook, composing the firm of J. C. Ayer & Co., Joel D. Harvey, and William C. Goudy and George Chandler, composing the firm of Goudy & Chandler.

The bill alleges that Renick Huston died in February, 1864, in Pickaway County, the county of his residence, in the State of Ohio, testate, and that letters testamentary issued to Thomas T. Renick, February 12, 1864. (The will and letters were filed with the bill, and made a part of it.) That Thomas T. Renick of that county, died testate in August, 1873, and letters testamentary upon his estate were issued in the same month to Benjamin F. Renick, and that complainants on the 5th of Sept., 1873, were appointed administrators *de bonis non*, with the will annexed of the estate of said Renick Huston. That said Renick Huston, at the time of his decease, was seized in fee of the W. ½ of S. W. ¼ of section 10, Town 39, Range 13 East, in Cook County, Illinois. That the title to this land was after his decease, transferred and became vested in Job R. Renick, one of the complainants, who held it in trust for the estate of Renick Huston. That Charles C. Bonney and J. Edwards Fay, doing business under the firm name of Bonney & Fay, and who afterwards became associated with Mr. Griggs, and doing business under the name of Bonney, Fay & Griggs, were the attorneys and legal advisers of Thomas T. Renick, and after his decease, of his executor Benjamin F. Renick, and also of complainants as administrators of the estate of Renick Huston, and well knew that Job R. Renick had no beneficial interest in the land, but held it in trust for the estate of Renick Huston.

That on the 15th of July, 1872, Thomas T. Renick, as executor of the estate of Renick Huston, sold said land to Joel D. Harvey for $150,000—$39,250 cash, and the bal-

ance in three annual payments of $39,250 each, with interest secured by three notes, made by Joel D. Harvey, and payable in one, two and three years respectively, from July 15, 1872. That Job R. Renick conveyed the land to Harvey in pursuance of the sale, and that Harvey, at the same time, conveyed the land in trust to J. Edwards Fay, to secure the payment of the notes, and that the notes and trust deed were left in the custody of Bonney, Fay & Griggs as the attorneys of the estate of Renick Huston, and to be held for the benefit of that estate and as said attorneys well knew, as the sole property of the estate of Renick Huston. That after their appointment complainants were importuned by parties interested in the firm of B. F. Renick & Co., of Canton, Ohio, composed of Benjamin F. Renick and Peter G. Classen, and carrying on the business of manufacturing chromatic printing presses, to allow some portion of the proceeds belonging to the estate of said Renick Huston to be loaned to said firm, or invested in said business, and complainants uniformly rejected such importunities, and took the precaution of distinctly stating to said Bonney, Fay & Griggs, attorneys of said estate, and while they held said notes, that no portion of the funds belonging to said estate, would be permitted by complainants to go into said firm, or said business, or into the hands of said Benjamin F. Renick, but that the same must be paid and accounted for to the complainants as administrators of said estate.

That notwithstanding this, and without in any manner consulting complainants or either of them, said Bonney, Fay & Griggs, did in May, 1875, deliver one of said promissory notes for the sum of $39,250, due July 15, 1874, and long after the same was due, to said B. F. Renick, and said Renick endorsed the said note as executor of the estate of Thomas T. Renick, and delivered the same so endorsed to J. C. Ayer & Co., a firm composed of James

C. Ayer, Frederick Ayer and Albert G. Cook, as collateral security for a debt due said J. C. Ayer & Co., from B. F. Renick & Co., and the bill charges that J. C. Ayer & Co. are not *bona fide* holders of said note, and avers that at the time of said transfer and endorsement, J. C. Ayer & Co. had notice of the fact that said note did not belong to the firm of B. F. Renick & Co., and that it was then being wrongfully transferred to said firm of J. C. Ayer & Co., and that they have no right to hold said note as against complainants, nor even as against the estate of Thomas T. Renick, deceased, and that any assertion of title thereto by the said J. C. Ayer & Co. is a fraud upon complainants, and upon the estate upon which complainants are administrators. That complainants knew nothing of this transaction until shortly before the filing of the bill, and that the note is in the hands of William C. Goudy and George Chandler, who are holding it for J. C. Ayer & Co. Prays that they may be enjoined from parting with it, and that upon the final hearing, the defendants composing the firm of J. C. Ayer & Co. may be decreed to deliver the note to complainants, and that the injunction be made perpetual, &c.

The will of Renick Huston and letters to complainants were filed as Exhibits.

The answer of William C. Goudy and George Chandler was filed on the 9th of February, in which they state that the note was not in their possession or under their control, and the bill was on the same day dismissed as to them.

On the fourteenth of February leave was given complainants to file amendments to the bill, and these amendments are set forth on pages 64–66 of printed record. In these amendments complainants allege that after the execution of said trust deed to Fay to secure payment of said promissory notes, said land was conveyed to Henry

K. Porter, William H. Ferry and James B. Goodman, as trustees of the West Chicago Land Company, an incorporated company, and that said trustees sold the south 40 acres thereof to Anthony McElroy, Edward L. Davidson, Charles B. McElroy and John J. McElroy, and that pending the negotiation for the sale of said property, complainant Palmer C. Smith, was applied to by said Harvey, and was informed that the purchasers of said south forty acres desired that the same should be subject to only one trust deed. That the notes and obligations they were to give for the property would be secured by a trust deed of the same, and that said notes, amounting to $96,000, would be deposited as collateral security for the payment of said two notes of $39,250 each, payable to Thomas T. Renick, as aforesaid, and requesting the complainants to consent to the release of said south 40 acres from the trust deed made to said Fay, and hold said notes in the place of the land so released as collateral security for the payment of said two notes, and desired complainant to extend the payment of said two notes, for two years respectively. That complainant Smith assented to the release of said forty acres upon the terms, and in the manner proposed, but stated that he could not enter into any binding contract to extend the payment of said notes as requested, but that a suit had been brought and was then pending in the State of Ohio, involving said estate of Renick Huston, and that the money represented by said notes would not be required by said estate, until said litigation was terminated, and he was satisfied that said litigation would last, at least, during the time that said parties desired said payment to be extended, and that he would not as the representative of said estate press the collection of said note until said litigation should terminate. That he embodied this agreement in writing, and signed the same as one of the administrators, and as the attorney for the estate of Renick Huston and

Thomas T. Renick, and delivered to, and left with said Joel D. Harvey, said writing. That in said writing it is expressly stated that said two notes belong to the estate of Renick Huston, and a clear and distinct statement of the title of the complainants as representatives of the estate of Renick Huston to said two notes, for whose benefit the note to be given by the purchasers of the land from the West Chicago Land Company should be left in case said south 40 acres should be released as aforesaid, that the sale of the 40 acres was made, the notes amounting in the aggregate to $96,000, with trust deed to George C. Campbell to secure the same, was taken and given to J. Edwards Fay as collateral security for the two notes to Thomas T. Renick, and the 40 acres released as proposed. William H. Ferry, James B. Goodman and Henry H. Porter, trustees of the West Chicago Land Company, George C. Campbell, Anthony McElroy, Edward L. Davidson, Charles B. McElroy and John J. McElroy, are made defendants, and an injunction prayed against them, enjoining them from interfering with said notes, or paying the same to any one, other than complainants, and under the order and direction of the court. The agreement referred to in the amendments is made an exhibit. The words granting the extension of the two notes of $39,250 each are:

" Now, therefore, I, P. C. Smith of the said County of " Pickaway, and State of Ohio, one of the administrators " *de bonis non* with the will annexed of said Renick Huston, " and attorney for said estate, do hereby say that I will " not press the payment of said two notes until such time " as I shall require the said money to be paid by reason of " the termination of said suit. The extension of the time " of the payment of said two notes shall not in any event " be for a term exceeding two years, upon each of said

" notes from the time when each of said notes respectively " become due and payable by the written terms thereof."

The notes given by the purchasers of the land company, twenty-four in number, were, at the time of the hearing, in the hands of J. Edwards Fay. (See printed Record, p. 83.)

Chas. C. Bonney and Charles W. Griggs filed their answers March, 1876, to which complainants filed a general replication March 29. B. F. Renick, for himself and as executor, filed his answer April 5, on the same day the answer of James C. Ayer, Frederick Ayer, and Albert G. Cook was filed. They say that on the 26th of May, 1875, they were applied to by B. F. Renick & Co. for a loan to that firm of $39,250, to be secured by the promissory note of B. F. Renick & Co. for that amount, and maturing July 15, 1877, with a note of Joel D. Harvey for $39,250 to Thomas T. Renick, secured by a trust-deed of this real estate as collateral security; and they say that upon the advice of counsel, they accepted the proposition, and made the loan to B. F. Renick & Co.; and that B. F. Renick, as executor of Thomas T. Renick, endorsed and delivered to them this note of Joel D. Harvey, as collateral security for the re-payment of this loan; that they were advised by the attorneys they consulted that said Benjamin F. Renick was fully authorized by the will of Thomas T. Renick to use the note for this purpose; they insist that he had such authority, and say that they have ever since held and now hold the note as such security. On the 25th of April replications were filed to this answer, and the bill dismissed as to Benjamin F. Renick, executor. On the 27th of April complainants filed their supplemental bill with Edward J. Van Meter, administrator *de bonis non*, with the will annexed, of the estate of Thomas T. Renick, as co-complainant, alleging by way of supplement, that since the filing of the bill, to wit, on the the 10th of Feb-

ruary, A. D. 1876, Benjamin F. Renick had voluntarily resigned his office as executor of the estate of Thomas T. Renick; that his resignation had been accepted; that said E. J. Van Meter had been duly appointed administrator, with the will annexed, of said estate, and praying that he might be permitted to prosecute said suit as co-complainant, and that the relief therein prayed for might be granted. There is filed with the bill exemplified copies of the proceeding, by which this change was accomplished, together with the copy of the will of Thomas T. Renick. The following is the clause of the will, which defendants insist authorizes the use of this note to Thomas T. Renick as collateral security for money borrowed by B. F. Renick & Co.:

"4th. Whereas, I have and hold in my name an in-
"terest in the firm of Tower, Classen & Co., manufac-
"turers of chromatic printing presses, which company are
"manufacturing said printing presses at Canton, Ohio,
"and which interest was paid for out of funds belonging
"one-third to myself, one-third to my sister, Mary Gregg,
"one-third to my nephews and nieces, the children of my
"brother, Jonathan Renick, deceased, it is my request
"that the whole interest in said company be held and re-
"tained so long as my brother, Benjamin F. Renick,
"may, in his discretion, think the same will be profitable,
"and I desire that the same shall be under the control and
"management of the said Benjamine F.; and as to my in-
"terest in the same, I desire that it shall be held, con-
"trolled, and managed by my said brother, Benjamin F.,
"for the benefit of himself, and my nephews and nieces,
"the children of my sister, Catharine Darst, deceased,
"the children of my brother, Jonathan Renick, deceased,
"and Henry R. Gregg, the son of my sister, Mary Gregg,
"share and share alike; and I give and bequeath all
"my interest in said company to my brother, Benjamin F.

" Renick, in trust, for himself, and my said nephews and " nieces above named, in equal proportions, to be held, " retained and controlled by my said brother, Benjamin " F., so long as he, in his discretion, may deem advisable; " my meaning is, that each nephew and each niece is to " take one share with my brother, Benjamin."

The cause was, on the 4th of May, upon the application of James C. Ayer, Frederick Ayer, Albert G. Cook, removed into the Circuit Court of the United States for the Northern District of Illinois.

June 27th, J. Edwards Fay filed his answer, to which replication was filed July 14, 1876.

On the 11th of July, 1876, Henry H. Porter, William Henry Ferry and James B. Goodman, Trustees of the West Chicago Land Company, Joel D. Harvey and George C. Campbell, filed their answer, in which they admit the statements made in the amendments to the bill, namely, the subsequent sale of the South 40 acres, the release of the same from the trust deed to Fay, and the substituting of the 24 notes for $4,000 each in the place of such release; and they set forth the written agreement, signed by P. C. Smith as one of the administrators and attorney of the estate of Renick Huston and Thomas T. Renick, dated September 12, 1874, already referred to, and also an exact duplicate of this agreement, with the single exception that it omits all reference to the estate of Renick Huston in connection with said note, and is signed " Ben- " jamin F. Renick, executor of the estate of Thomas T. " Renick, deceased, by J. Edwards Fay, his attorney."

It appears, (see page 82 of printed record,) that this agreement, signed Benjamin F. Renick, executor, etc., was in fact signed and left with James B. Goodman, at his office in Chicago, on the 1st of February, 1875, but dated back to September 12, and that he thereafter held both

agreements, the one signed by Smith and the one signed by Renick. On the 13th of July, the appearance of defendants, Anthony McElroy, Edward L. Davidson, Charles B. McElroy and John J. McElroy, was entered, and they adopted the answer of the trustees of the West Chicago Land Company as their answer. No issue was taken upon this answer.

On the hearing, the written admission, in behalf of the defendants, James C. Ayer, Frederick Ayer and Albert G. Cook, to the effect that although Job R. Renick became seized in fee simple, absolute, of the title to said land, as appears by the records, yet by an arrangement between the parties, but which does not appear of record, he held it in trust for the benefit of the estate of Renick Huston and Thomas T. Renick.

The deposition of Palmer C. Smith, one of the complainants, was taken and read at the hearing. He testified that the agreement, signed by himself and left with Mr. Goodman, was prepared by Mr. Fay, and signed in Mr. Goodman's office, in Mr. Fay's presence. That the title to the property, for which the two notes of $39,250 each were given, was held in trust by Job R. Renick for the benefit of the estate of Renick Huston; and that Job R. Renick had no beneficial interest in it, of any kind; that the property, with other property, became encumbered with judgments and tax claims, and that Thomas T. Renick, while acting as administrator of the estate of Renick Huston, made advances of considerable sums of money to remove these encumbrances; that the property was sold at a judicial sale, and the title taken in the name of Job R. Renick, who held it in trust for the re-payment of these advances by Thomas T. Renick, and then for the estate of Renick Huston. That these advances were all repaid to Thomas T. Renick in his lifetime out of the proceeds of sales of

the property, and that these two notes belonged wholly to the estate of Renick Huston.

That Mr. Fay well knew this fact, and that he had given Mr. Fay specific instructions not to allow any of the property belonging to the estate of Renick Huston to go into the firm of B. F. Renick & Co., and first heard that this note had gone to J. C. Ayer & Co. shortly prior to the commencement of this suit, and that he knew nothing of the execution of the agreement by B. F. Renick until after the commencement of the suit.

The complainants put in evidence the agreement signed by Smith, and the originals of the various exhibits attached to their pleadings, and the written statement of Mr. Goudy, found on pages 84 to 87 of the printed record, which was treated as evidence. In this statement Mr. Goudy says the firm of Tower, Classen & Co., mentioned in the will of Thomas T. Renick, afterwards became the firm of Benjamin F. Renick & Co.; that is, Benjamin F. Renick & Co. were the successors of Tower, Classen & Co. in conducting the same business, the only change being in the membership and names of the firm. That in May, 1875, B. F. Renick & Co. applied to J. C. Ayer & Co., of Lowell, Mass., for a loan of about $40,000, and J. C. Ayer & Co. referred the matter to him to pass upon the validity and sufficiency of the securities offered. That the two notes of Joel D. Harvey for $39,250 to Thomas T. Renick, and each containing the following endorsement:

" CHICAGO, Feb. 19, 1875.

" Payment of the within note extended as per contract " of Sept. 12th, 1874, now in the hands of James B. Good- " man, Esq., for a period not exceeding two years from " July 15th, 1874.

" J. EDWARDS FAY, *Trustee.*
" B. F. RENICK,
" *Executor and trustee of Thomas T. Renick.*"

were placed in his hands. That he examined the trust deed securing the notes; also the will of Thomas T. Renick. That Renick informed him that he wished to use the money borrowed in the business of B. F. Renick & Co. as manufacturers of chromatic printing presses; and that said establishment was the same designated in the will of Thomas T. Renick as the one controlled by Tower, Classen & Co. That he examined the will of Thomas T. Renick, and the letters issued to B. F. Renick, and advised the loan upon these securities, and advised J. C. Ayer & Co. to take the note first falling due, for in his opinion the same was well secured by the trust deed, and the title in the trustee was good. That the loan was accordingly effected, J. C. Ayer & Co. taking the note of B. F. Renick & Co., as principals, for $39,250, payable July 15, 1877, with interest at 10 per cent. per annum, payable semi-annually, and B. F. Renick, as executor of Thomas T. Renick, endorsed to them the note of Joel D. Harvey as collateral, and the money was paid to B. F. Renick & Co. by J. C. Ayer & Co.

He says, in a supplemental statement, that a duplicate or copy of the agreement for an extension, signed by B. F. Renick, was shown to him by B. F. Renick; but that the agreement signed by P. C. Smith for the same purpose was not shown to him. And the defendants gave the agreement signed by B. F. Renick in evidence, and also a copy of the will of Thomas T. Renick.

Upon this evidence, and the pleadings, (the answers filed being treated as answers to the supplemental bill), the case was heard, and a decree was entered dismissing the bill for want of equity; and from this decree complainants bring the case by appeal to this court.

The error assigned is, that the court below erred in dismissing the bill.

ARGUMENT.

It is proper for us to say that the misconduct imputed in the bill of complaint to the members of the firm of Bonney, Fay & Griggs, is properly chargeable to J. Edwards Fay. There is no evidence in the record at all implicating Messrs. Bonney & Fay, other than the single fact of the association of their names with his in a business capacity, and they are cheerfully exonerated from all moral blame in the matter. However the case may issue, no relief will be asked against them.

The only question presented by this record is, did J. C. Ayer & Co., by the transaction set forth in it, acquire a good title to this note for $39,250 as against the estate of Renick Huston, and the estate of Thos. T. Renick, for both estates are prosecuting this suit by their representatives, for its recovery. The money was loaned by J. C. Ayer & Co. to B. F. Renick & Co., and was used in that firm in their business. No portion went to either of these estates. Mr. Goudy acted in the transaction as the attorney of J. C. Ayer & Co.; and whatever facts were communicated to him were, in legal contemplation, communicated to them. The advice he gave should not, of course, prejudice the complainants, for they did not employ him, nor was it given in their behalf, consequently it cannot in any aspect of the case affect them. Had he called upon Mr. Goodman for the agreement referred to in the endorsement upon the note, Mr. Goodman would undoubtedly have given him both agreements—the one signed by P. C. Smith, and the one signed by Benjamin F. Renick, as executor of the estate of Thomas T. Renick. This would have informed him that the note actually belonged to the estate of Renick Huston; and we insist that he, and consequently his clients, were at the time chargeable with notice of this fact. The endorsement on the note directed

him to inquire of Mr. Goodman, whose office was in Chicago, for the agreement, and from it learn the character of the extension of the payment of the note. Whenever a party is put upon inquiry, he is deemed to have knowledge of all the facts which that inquiry, if prosecuted, would have disclosed.

We will first view the case in behalf of the estate of Thomas T. Renick, whose representative is prosecuting this suit as one of the complainants. The note is payable to Thomas T. Renick. This was a distinct statement to these defendants that the note belonged to his estate, that it was a part of the assets of that estate. More than this. In the agreement for the extension of the payment of the note signed by Benjamin F. Renick, as executor of the last will of Thomas T. Renick, and which was placed in the hands of Mr. Goudy at the time, Renick says that he "will not press the payment of the said two notes until "such time as *I shall require the said money to be paid to* "*me to make settlement of said estate.*"

Here is a distinct statement that these notes belonged to that estate, and that he would be reqnired to account for it when paid, as executor of the estate.

The defendants, therefore, knew that the use of this note for the benefit of B. F. Renick & Co.; and as collateral security for the money they were about to loan that firm, was a misapplication of it.

In the case of *Lowry* v. *Commercial Bank of Baltimore and others*, reported in 6 Western Law Journal, Talbot Jones died the owner of 282 shares of stock in the Commercial and Farmers' Bank of Baltimore. By his last will he directed his executors to pay the dividends upon this stock to his sister, Maria Lowry, during her life; and the stock, with the residue of his estate, he bequeathed to Samuel Jones and Andrew D. Jones, his executors in trust,

for parties named. He died in 1834. Samuel Jones, one of the executors, had the stock transferred to the Merchants' Bank, by surrendering the certificates as executor, and having new certificates issued to the Merchants' Bank. On these new certificates he borrowed from that bank money on his own account. When his note was paid the stock was surrendered to him by the bank and returned to the estate. Afterwards the stock was again transferred to the bank, and upon it the firm with which he was connected borrowed various sums of money, and it was finally sold to pay one of the notes for which it was pledged. Held by the Court, that the Commercial and Farmers' Bank was liable to the complainant, Maria Lowry, for the dividends upon the stock. Court say: "Undoubtedly the mere act of permitting this stock to be "transferred by one of the executors furnishes no ground "for complaint against the bank, although it turns out that "this executor was, by the act of transfer, converting the "property to his own use; for an executor may sell and "raise money on the property of the deceased in the regu- "lar execution of his duty, and the party dealing with him "is not bound to enquire into his object, nor liable to the "misapplication of the money. But it is equally clear that if "a party dealing with an executor has at the time reasona- "ble ground for believing that he intended to misapply the "money, or is in the very transaction applying it to his own "private uses, the party so dealing is responsible to the per- "sons injured." This case was decided in the United States Circuit Court of Maryland, by TANEY, Justice.

The case of *McLeod* v. *Drummond*, 17 Vesey, 152, holds that "a pledge of the assets of an executor cannot be held "against a pecuniary or residuary legatee, and though for "money advanced at the time of and under circumstances "showing an intended application not conformable to or "connected with the character of executor."

See also Story's Eq. Juris., §§ 422, 423 and 424.

A person receiving in exchange for property sold to an administrator, for his own use, promissory notes belonging to an estate, with notice from the character of the transaction that the transfer of the notes was a breach of the administrator's duty, cannot hold the notes or profit by their purchase, as against those rightfully entitled to them.

Thomasson v. *Brown*, 43 Ind., 203.

As the legal owners of the credits and choses in action of their testators, executors may transfer negotiable paper, which is part of the personal estate. If a transfer of such property is made in a transaction in nowise connected with the estate, but for the personal gain and advantage of the executor, the chose in action does not lose its character as assets, and the assignee will acquire no title. When negotiable paper is payable to an executor as such, it is notice to those who take it that it is assets of the estate and not the individual property of the executor.

Booyer v. *Hodges*, 45 Miss., 78.

Where one takes a note of the estate from an administrator *mala fide*, as for instance in the payment of the administrator's own debt, he cannot hold the fund from the next of kin or those who are entitled to be substituted in their place, unless the administrator was in advance to the estate.

Latham v. *Moore*, 6 Jones, (Eq.) N. C., 167.
Burbank v. *Payne*, 17 La., 15.

An administrator has no authority, and the court of Probate can give him no authority to advance money to a firm of which his intestate was a member in order to protect the interests of the estate in such firm, and he would be liable for any loss resulting from thus advancing the money.

Tompkins v. *Weeks*, 26 Cal., 50.

A party having purchased a bond and mortgage know-

ing that they belonged to the estate of a testator, and that the executor from whom he purchased intended to appropriate the proceeds to his own use, will be adjudged as conniving with the executor to work a *devastavit*, and held responsible to the persons injured by the purchase for the amount due on the bond and mortgage at the time of the transaction, with interest.

Sacia v. *Berthoud*, 17 Barb. (N. Y.), 15.
Miller v. *Williamson*, 5 Ind., 219.
Williamson v. *Morton*, 2 Md. Ch., 94.
Wilson v. *Doster*, 7 Ired., 231.

If the purchaser has notice that the transaction amounts to a *devastavit* he is liable to legatees and distributees, and the property may be pursued. A transfer by way of security or in extinguishment of the private debt of the executor is sufficient notice.

Petrie v. *Clark*, 11 S. and R., 388.
Field v. *Schiefelin*, 7 John. Ch., 155.
Williamson v. *Branch Bank*, 7 Ala., 906.
Williamson v. *Morton*, 2 Md. Ch., 94.
Dodson v. *Simpson*, 2 Rand, 294.
Colt v. *Lasnier*, 9 Cow., 320.
Parker v. *Gilliam*, 10 Yerg., 394.
Garnet v. *Macon*, 6 Call., 361.
Graff v. *Castleman*, 6 Rand, 204.

At law actual collusion is necessary, but equity regards the whole transaction.

Williamson v. *Morton*, 2 Md. Ch., 94.

An appropriation by an administrator of the assets of his intestate to his own private use is *prima facie*, a breach of trust, and a fraud upon the right of those interested in the estate, and he who knowing the purpose of the administrator so to appropriate them, purchases them from him, or

advances him money upon their pledge whereby the fraud is actually consummated, takes them *mala fide*.

Rhame v. *Lewis*, 13 Rich. (S. C.) Eq., 270.

Authorities of this character might be extended indefinitely.

II.

By the act of March 17, 1869, Vol. 3, p. 1757, Sayler's statutes of Ohio, it is provided that the Probate Court, "may upon good and sufficient proof that it would be for "the advantage of the estate of the decedent to sell any "part of the personal estate at private sale, said court may "authorize such executor or administrator to thus sell per- "sonal estate, or any part or parcel thereof at private "sale, etc."

Taney, Justice, in the course of his opinion in the case of *Lowry* v. *Commercial Bank of Baltimore*, refers to a statute of the State of Maryland, which gives to an executor power to procure an order of sale from the Orphan's Court when a sale is necessary, and says:

"It may we think be safely asserted that in practice "under this law, there has been no instance in Maryland "since its passage in which an executor acting fairly and "*bona fide* has undertaken to sell or pledge property spe- "cifically bequeathed without a previous rule from the "Orphan's Court. * * * In South Carolina under a law "very similar in its provisions, it has been decided that the "sale of such property by an executor is void unless made "by the authority of the court (4 Des., 522), and we think "there are strong reasons to support that decision."

In the case of *Rhame* v. *Lewis*, 13 Rich., (S. C.), 270, it is held that no valid disposition of an intestate's personal chattles, or visible effects can be made by an administra-

tor without a previous rule of the court of equity or ordinary. In the case of *Saxon* v. *Barksdale*, 4 Dess., 521, in speaking of a similar statute of that State, the court say: "This law manifestly intended to take away that absolute "power of the executor or administrator over the property "of the deceased which he before held, and obliges him to "consult, and be guided by a court of justice to warrant "him in selling any part of the personal property, even "perishable articles."

In *Burbank* v. *Payne*, 17 La., 15, held that an administrator cannot transfer negotiable assets without an order of court.

III.

The title of the administrator *de bonis non* dates from the death of the decedent, and he may recover not only upon causes of action in favor of the deceased in his lifetime, but equally for any such cause of action accruing after the decease, in regard to assets, and he will not be estopped by any illegal act of the former representatives of the estate.

3 Redfield on Wills, 102 and note.

IV.

The defendants in their answer say: "Their said at- "torneys advised them that the said Benjamin F. Renick, "as the executor of the said Thomas T. Renick, was "fully authorized by the will of the said Thomas T. Ren- "ick, and had full power and authority to assign and "transfer said notes, and these defendants thereupon loaned "and advanced to the said Benjamin F. Renick & Co. the "sum of thirty-nine thousand two hundred and fifty dol- "lars," etc.

As the attorneys who gave this advice drew this answer, it is fair to assume that these defendants have rested their case wholly upon the question whether an authority to use this note in the way it was used, can be found in the will of Thomas T. Renick.

It purported to belong to the general assets of Thomas T. Renick. At the time of his death, Thomas T. Renick was a member of the firm of Tower, Classen & Co., manufacturers of chromatic printing presses, at Canton, Ohio, and of course his death terminated that relation.

Whatever is said in the will about continuing his interest in that firm, is said with reference to the firm as it was then constituted. There was a change in this firm after his death. There was a change in the membership and in the name of the firm, which of course involved a change of interests, and destroyed its identity. There is no evidence that the new firm of B. F. Renick & Co. contains a single member of the old firm of Tower, Classen & Co., and the will says nothing about the successor of Tower, Classen & Co. An authority to continue an interest in the firm of Tower, Classen & Co. cannot be treated as an authority to transfer that interest to and continue it in a new firm.

2. But this litigation does not involve the question whether this interest was rightfully or wrongfully transferred to this new firm, but whether the general assets of the estate of Thomas T. Renick could be used by its executor and a party personally interested to pay the debts of this new firm.

Story, in his work on Partnership, § 201 *a*, says:

"Nothing but the most clear and unambiguous language, "demonstrating in the most positive manner that the "testator intends to make his general assets liable for all "debts contracted in the continued trade after his death,

" and not merely to limit it to the funds embarked in that " trade, would justify the court in arriving at such a con- " clusion."

Citing *ex parte* Garland, 10 Vesey, 110, 121, 122, and *Pitkin* v. *Pitkin*, 7 Conn., 307.

This doctrine was distinctly affirmed in the case of *Burwell* v. *Mandeville's Exr.*, 2 How., 560, 576.

In the last case the opinion of the court was given by Justice STORY, and the language of the text already quoted, repeated, and many authorities were cited in support of it. In that case, the language in the will was: " It is my will that my interests in the copartnership sub- " sisting between Daniel Cawood and myself, under the " firm of Daniel Cawood & Company, shall be continued " therein until the expiration of the term limited by the " articles between us, the business to be continued by the " said Daniel Cawood, and the profit or loss to be dis- " tributed in the manner the said articles provide."

Cawood, after the testator's death, carried on the copartnership in the name of the firm, and failed in business before the regular expiration thereof, according to the articles, and the object of this litigation was to hold the general assets of the estate of Joseph Mandeville liable for the debts of the co-partnership contracted after his decease; and this court says, at page 576: " By the general " rule of law, every partnership is dissolved by the death " of one of the partners. (*Scholfield* v. *Eichelberger*, 7 Pet., " 586.) It is true that it is competent for the partners to pro- " vide, by agreement, for the continuance of the partnership " after such death; but then it takes place in virtue of such " agreement only, as the act of the parties, and not by " mere operation of law. A partner, too, may, by his will, " provide that the partnership shall continue, notwithstand- " ing his death; and if it is consented to by the surviving

"partner, it becomes obligatory, just as it would if the "testator, being a sole trader, had provided for the con- "tinuance of his trade by his executor, after his death. But, "then, in each case the agreement or authority must be "clearly made out; and third persons, having notice of the "death are bound to inquire how far the agreement or au- "thority to continue it extends, and what funds it binds; and "if they trust the surviving party beyond the reach of such "agreement, or authority, or fund, it is their own fault, and "they have no right to complain that the law does not "afford them any satisfactory redress.

"A testator, too, directing the continuance of a partner- "ship, may, if he so choose, bind his general assets for all the "debts of the partnership contracted after his death. But "he may also limit his responsibility, either to the funds "already embarked in the trade, or to any specific amount "to be invested therein for that purpose; and then the "creditors can resort to that fund or amount only, and not "to the general assets of the testator's estate, although "the partner, or executor, or other persons carrying on "the trade may be personally responsible for all the debts "contracted. * * * * * * * *

"And this leads us to remark, that nothing but the most "clear and unambiguous language, demonstrating in the "most positive manner that the testator intends to make "his general assets liable for all debts contracted in the "continued trade after his death, and not merely to limit "it to the funds embarked in that trade, would justify the "court in arriving at such a conclusion from the manifest "inconvenience thereof, and the utter impossibility of pay- "ing off the legacies bequeathed by the testator's will, or "distributing the residue of his estate without, in effect, "saying at the same time, that the payments may all be "recalled if the trade should become unsuccessful or "ruinous."

X The case of Deutch. Adm
Behrens. 28 Ohio Stat
231, is a very good case.
point.

And the court affirmed the decree of the court below, dismissing the bill.

If the general assets of the estate of Thomas T. Renick were not bound for the debts of B. F. Renick & Co., then applying them to that purpose was a misappropriation of them. Whether they were thus bound depends upon the testator's intention as expressed in his will, and this intention must be expressed in "the most clear and unam-"biguous language, demonstrating in the most positive "manner that he intended to make his general assets thus "liable." No such intention can be found in this will of Thomas T. Renick. On the contrary, it is manifest that he intended to limit the liability of his estate to that portion of his assets that was at the time of his death embarked in the co-partnership of Tower, Classen & Co., of which firm he was then a member, and he simply provided that it should be continued in the firm so long as his brother Benjamin F. Renick should regard it as a profitable investment. The language of the will, on page 89 of the record, is:

"Whereas, I have and hold in my name an interest in "the firm of Tower, Classen & Co., manufacturers of "chromatic printing presses, which company are manu-"facturing said printing presses at Canton, Ohio, and "which interest was paid for out of funds belonging to "myself, one-third to my sister, Mary Gregg, and one-"third to my nephews and nieces, the children of my "brother, Jonathan Renick, deceased.

"It is my request that the whole interest in said com-"pany be held and retained so long as my brother, Ben "jamin F. Renick, may, in his discretion, think the same "will be profitable; and I desire that the same shall be "under the control and management of the said Benja-"min F.; and as to my interest in the same, I desire that "it shall be held, controlled and managed by my said

" brother, Benjamin F., for the benefit of himself, and " nephews and nieces, the children of my sister, Cather- " ine Darst, deceased, the children of my brother, Jona- " than Renick, deceased, and Harry R. Gregg, the son of " my sister, Mary Gregg, share and share alike; and I " give and bequeath all my interest in said company to " my said brother, Benjamin F. Renick, in trust, for him- " self, and my said nephews and nieces, above named, in " equal proportions, to be held, retained and controlled by " my said brother, Benjamin F., so long as he, in his dis- " cretion, may deem advisable. My meaning is, that each " nephew and each niece is to take one share with my " brother, Benjamin."

To give his brother complete control of this interest, so that he could exercise the discretion with which he was vested fully, and without being at all trammeled by his official duties as executor, he devised this interest to him in trust for those who were the equitable owners of it, stating that this interest was purchased and paid for, one-third by himself, one-third by his sister, Mary Gregg, and one-third out of funds belonging to the children of his brother, Jonathan Renick.

He thus separated this interest from the rest of his estate, and placed it in the hands of B. F. Renick, not as executor, but as trustee, and all the duties in respect to this interest that were devolved upon B. F. Renick, were devolved upon him as trustee, and he could have performed them without taking out letters.

In *Dunning, Trustee*, v. *Ocean Nat. Bank*, 61 N. Y., 497, D died seized of real estate covered by a mortgage, and leaving a will by which he devised the real estate to his executor upon certain specified trusts. The executor named renounced and refused to accept the trust. The defendant, the owner of the mortgage, foreclosed the same, and upon a sale bid in the lands at a price whic

left a surplus. This defendant retained. Plaintiff was subsequently administrator, with the will annexed, and was thereafter duly appointed trustee to carry out the trust imposed as executor. Held that she could not recover the surplus as executrix, but only as trustee, and that the cause of action did not arise until she was appointed as such trustee. The Court say, at page 501: "In the case at bar it is, I think, very obvious that the "testatrix intended to make her executor a trustee, with "large discretionary power, which he might exercise "without any reference to his duty as executor. This "trust duty was not annexed to the office of executor, but "was devised to him as a power. He might, therefore, "accept and execute the trust without proving the will, "or taking out letters testamentary. He became trustee, "and was vested with the trust estate by virtue of the "will alone." (And cases cited.)

There is not the slightest ground for saying that there is anything in the will to justify B. F. Renick in using property he held as executor for the benefit of property he held as trustee. Nothing could have more clearly indicated the purpose of the testator to keep these two species of property separate and distinct, than his placing them thus in the hands of the same person under different titles.

V.

The note was transferred to J. C. Ayer & Co., May 26, 1875. It was dated July 15, 1872, and was upon its face due two years from date. It was therefore ten months over due. It had lost its negotiable quality, and was in the condition of an ordinary chose in action.

The language of the extension used both by P. C. Smith, who represented the estate of Renick Huston, the

owner of the note, and B. F. Renick, executor, the holder, is: "I do hereby say that I will not press the payment of "said two notes until such time as I shall require the said "money to be paid to me to make settlement of the said "estate, provided that the extension of the time for the "payment of the said two notes shall not in any event be "for a period exceeding two years upon each of said "notes, from the time when each note respectively be- "comes due and payable by the written terms thereof "upon the said notes."

That is, the extension should not be for a longer period than two years, but within that time the time of payment depended upon a contingency that might happen at any time. All this so-called extension amounts to, is simply an assurance by the holder of the note that he would not press the payment of the note for two years unless the contingency mentioned should happen sooner. There was no consideration for this assurance, and it was given at the instance of parties who were negotiating for the purchase of this property, subject to the payment of these notes. There was no new promise by the maker, and no consideration for this assurance. Suit could have been brought upon the note at any time after it was due, and this assurance could not have been successfully interposed as a defense.

Even a covenant not to sue within a limited time, though supported by a sufficient consideration, cannot be pleaded in bar of an action brought before such time has expired.

Guard v. *Whiteside*, 13Ills., 7.
Thimbleby v. *Barron*, 3 Mees. & Wels., 216.
Winans v. *Huston*, 6 Wend., 476.
Perkins v. *Gilman*, 8 Pick., 229.

It is idle to contend that an over due note, upon which

a suit can be brought at any time, retains the quality of negotiability so as to protect the title of the person who receives it while in that condition, against the claim of the party who in equity owns the note.

No. It is reduced to the condition of an ordinary chose in action, and he succeeds to no better title than the person had from whom he receives it, for the simple reason that the holder of a non-negotiable chose in action cannot by transferring it convey a better title than he himself has, and his assignee takes it not only subject to any latent equities existing in favor of the obligor, but also subject to like equities in favor of third persons.

Trustees of Union College v. *Wheeler*, 61 N. Y., 114.

The above is a very fully considered and well reasoned case, and numerous authorities are cited in support of this doctrine.

It appears from the record, and is conceded by these defendants, that this note belonged at the time to the estate of Renick Huston. That it was given for property owned by that estate, and the decree of the court instead of dismissing the bill, should have directed the delivery of it to the representatives of that estate.

VI.

The opinion of the learned Judge who tried the case in the court below was not filed, and is not, therefore, a part of the Record. It was, however, taken down by a short-hand reporter as it was delivered, and we think that in view of the amount involved, and the consequent importance of the suit to our clients, we are justified in presenting to this court the views that were taken of it by the court below. We have, accordingly, copied this opinion

in our brief. If it is improperly there it can be disregarded. The learned judge, in his opinion, omits all reference to the fact that this suit was prosecuted by Edward J. Van Meter, the duly appointed representative of the estate of Thomas T. Renick, to whom the note is payable, as well as the representatives of the estate of Renick Huston, to whom it really belongs. The rights of the representatives of the estate of Renick Huston were alone considered, and in the opinion the case is made to turn largely upon the question of whether there was anything in the case affecting J. C. Ayer & Co. with notice that the note was the property of the estate of Renick Huston, and not the property of the estate of Thomas T. Renick. The rights of the representative of the estate of Thomas T. Renick, are wholly ignored, and the persons interested in that estate, are regarded as acquiescing in the use which has been made of this note, for the benefit of the firm of B. F. Renick & Co. It is a little remarkable that that estate was not mentioned in the opinion, and that the circumstance that both of the estates were struggling to recover this note was not even alluded to.

We do not think the opinion gives full effect to the evidence upon this question of notice. The note contains this endorsement :

" CHICAGO, Feb. 19, 1875.

" Payment of the within note extended, as per contract, " September 12, 1874, now in the hands of J. B. Good- " man, Esq., for a period not exceeding two years from " July 15th, 1874.

" J. EDWARDS FAY, Trustee.

" B. F. RENICK, Executor and Trustee of Thos. T. Renick, deceased."

This agreement was expressed in two papers then in the hands of Goodman. One signed, " Benjamin F. Renick, " Executor of the last will and testament of Thomas T.

" Renick, deceased, Chicago, Sept. 12, 1874." Actually signed Feb'y 19, but ante-dated.

And the other signed, " P. C. Smith, one of the admin- " istrators, and acting for the estate of Ren. Huston and " Thomas T. Renick." Had Mr. Goodman been called upon for this agreement he would have produced both papers.

The learned Judge, in his opinion, says that the production of the paper signed by P. C. Smith would simply have disclosed the fact to the agents of J. C. Ayer & Co., that Mr. Smith signed the paper as " representative of the es- " tate of Thomas T. Renick and of Renick Huston," and he does not admit " that the appendages to a man's name " are necessarily notice of the interests of the various parties " that he then represented ; " but the agreement says distinctly that said " *notes are now the property of the estate of* " *Renick Huston, deceased.*"

2. The learned Judge admits that the authority to use this note for the benefit of the firm of B. F. Renick & Co. must be found, if it exists at all, in the will of Thomas T. Renick ; and on this point he says :

" It will be noticed that the will of Thomas T. Renick " clothes Benjamin F. Renick with full discretion to retain " the interest in this firm, and manage it in his own way as " long as he choose. This necessarily involves the reten- " tion of the capital of Thomas T. Renick's estate in them, " and the addition to that capital if the exigencies of the " firm and the business required it ; and I think but very " little can be said after you have said that. The grant of " power to the executor is so ample a discretion, and is so " complete, that it seems to me any one examining the will " for the purpose of ascertaining the powers of B. F. Ren- " ick in and about the assets of this concern, would say: " ' Of course this man is authorized to use the assets thal

" are in his hands as executor of Thomas T. Renick in and " about the business of this firm.' "

It will be noticed that the discretion here spoken of is, by the language of the will, limited to that portion of the testator's estate that was already embarked in the firm of Tower, Classen & Co., at the time of the testator's death; and, for the purpose of removing it from the domain of his official duties, and giving full scope to this discretion, he devises this portion to his executor in trust for the parties who were entitled to it, they being the heirs of the persons who furnished the money with which it was originally purchased.

In the remarks quoted, the learned Judge completely overturns the case of *Mandeville's Executors*, without even noticing it.

Further on, the Judge says :

" Now, there can be no doubt but what B. F. Renick " would have had the right, as the executor of Thomas T. " Renick, for the purpose of paying the debts of Thomas " T. Renick, to have sold these notes and paid these debts " with the proceeds. Now it is but another step—it is the " same thing in result—the firm of Tower, Classen and " Company became indebted. The estate of Thomas T. " Renick is liable for these debts ; the liability has been " continued by the will, and the executor of Thomas T. " Renick is bound personally and representatively for that " indebtedness ; and he may, therefore, it seems to me, use " the assets of the estate for the purpose of discharging the " liability."

There is no evidence whatever in the case showing, or tending to show, that the firm of Tower, Classen & Co. was indebted at the time of the decease of Thomas T. Renick, or that any portion of the money for which this note was collaterally pledged, was used, or ever intended to be used, to discharge any such debts.

These notes could not be used, nor could any portion of the testator's estate not already embarked in the firm of Tower, Classen & Co. be used for the purpose of paying any debts of that firm, contracted after the decease of Thomas T. Renick.

3. The learned judge, in his opinion, reproaches the representatives of the estate of Renick Huston with negligence in having left this note for so long a time in the hands of Benjamin F. Renick, and thereby enabling him to perpetrate the fraud upon the defendants. He says:

"Now the complainants claim that as administrators "with the will annexed of Renick Huston, they were "the owners or parties beneficially interested in this note. "They had for two years, or over two years, then, al- "lowed this note to remain in the hands of Benjamin F. "Renick when it ought to have been in their hands; and "after the death of Thomas T. Renick they had allowed "this note to remain in the hands of Benjamin F. Renick "when it ought to have been in the hands of the execu- "tors of Renick Huston. They allowed him to be in a "position where he perpetrated a fraud upon somebody "by turning this collateral out. * * * It seems "to me that having allowed him to retain possession of it, "they are bound by whatever he does with it; that is, as "between him and a party who pays value. Of course, "not as against a party who obtained it from him fraudu- "lently."

We think this statement does great injustice to the representatives of the estate of Renick Huston in view of the allegations contained in the bill of complaint, and the proof made on this point. The bill alleges (see page 3 of printed record) that these two notes were left by said Thomas T. Renick in the custody and possession of Bonney, Fay & Griggs, as attorneys of the estate of Renick Huston; that they became and were the property of the

estate of Renick Huston, and Messrs. Bonney, Fay & Griggs well knew that fact, and the bill expressly charges that they held the same for said estate, and that it became and was their duty to account for the same or any proceeds that might be realized therefrom to that estate. That the present representatives of said estate consulted with these gentlemen as the attorneys of said estate, respecting said notes, and repeatedly warned them against allowing the same to be used for the benefit of B. F. Renick & Co., and told them that said notes would not be permitted to go into said firm or business, or into the hands of Benjamin F. Renick, but that the same must be paid and accounted for to said complainants as representatives of said estate.

Mr. Smith, in his testimony (see page 75 of the printed record), says that these two notes belonged to the estate of Renick Huston, and that prior to September 12th, 1874, he expressly told Mr. Fay that the notes belonged to this estate, and gave him explicit instructions that no portion of them would be permitted to go into the firm of B. F. Renick & Co., and that they could not to any extent be used for the benefit of that firm.

He further says (see page 74), that Mr. Fay was present in the office of Mr. Goodman when the paper (found on pages 66 and 67 of printed record) signed by himself as one of the administrators and attorney for the estate of Renick Huston was executed. That he knew the contents of this paper. The paper contains the statement: "Which notes are now the property of the estate of Ren-"ick Huston, deceased."

The bill charges that in May, 1875, Messrs. Bonney, Fay & Griggs, in violation of these instructions, delivered one of these notes to Benjamin F. Renick for the purpose of enabling said Renick to use the same for the benefit of the firm of B. F. Renick & Co., and it appears from the evi-

dence that Mr. Fay, who had the charge of this matter, delivered the note, which J. C. Ayer & Co. held, to Benjamin F. Renick to enable him to use it for the benefit of B. F. Renick & Co. That he did this without the knowledge of his clients, the representatives of the estate of Renick Huston, and in violation of their instructions to him; that he afterwards took the other note to the Westboro Bank, and used it for the same purpose. Mr. Smith says, on page 75 of the printed record, that he first learned of this fact some 10 days or two weeks prior to the commencement of the suit. It appears, therefore, that Mr. Fay betrayed the trust reposed in him, and that the representatives of the estate of Renick Huston can in no sense be considered as having allowed Benjamin F. Renick to obtain the possession of these notes. But this suit, as we have already said, is being prosecuted by the representatives of the estate of Thomas T. Renick in conjunction with the representatives of the estate of Renick Huston; and Mr. B. F. Renick, however he obtained possession of the notes, held them simply as the executor of the estate, and he, of course, could not use them for his own benefit, and the benefit of the firm with which he was connected; and where the parties dealing with him were advised by the transaction itself that he was thus using them, they must return the notes to that estate.

It is hardly necessary for us to repeat that complainants in the bill cannot be injuriously affected by any advice which Messrs. Goudy & Chandler gave Messrs. J. C. Ayer & Co., for they did not seek this advice, nor was it given in their behalf.

MILLER & FROST,
For Appellants.

Opinion of the Court below.

These two cases were heard as one case, and for their main facts are essentially alike.

In July 1872 one Job R. Renick held the legal title to 80 acres of land near the western limits of this city, described as the West half of the South West quarter of Section ten, Township Thirty nine, Range Thirteen. It is alleged and considered as one of the admitted facts in the case that Job R. Renick held this land as a naked trustee without any beneficial interest in it himself, but for the estate of one Renick Houston deceased, and incidentally to indemnify or reimburse Thomas T. Renick who was the executor of Renick Houston deceased, for certain disbursements which he had obtained in and about the management of the property. Thomas T. Renick negotiated a sale of this property to Joel D. Harvey, Mr. Harvey representing a party of gentlemen who made the purchase, and taking the title, in the month of July 1872 for $157.000.00, payable one-quarter down cash, and the balance in one, two and three years, secured by the notes of Mr. Harvey, and a trust deed upon the property to J. Edwards Fay as Trustee, the notes being for the principal sum of $39,250.00, each, and three interest notes being then given for the interest upon the various installments as they fell due. The notes were taken payable to Thomas T. Renick, who as I have already stated, was the executor of Renick Houston. Thomas T. Renick had advanced, it is stated, somewhere from twenty to thirty thousand dollars to redeem this land from various tax sales and pay some debts which were a charge upon the property by the former owner, and was entitled to be reinbursed from this purchase money the amount of those advances, and was reimbursed substantially by the cash payment he received.

In August, 1873, Thomas T. Renick died. He had resided in Chippewa County, Ohio, and Renick Houston had formerly resided in Chippewa County, Ohio, had died there, and administration had been taken upon his estate there.

Thomas T. Renick by his will appointed one Benjamin F. Renick, his brother, his executor; and as Thomas T. Renick was at that time interested in a commercial firm, or manufacturing firm, at Canton, Ohio, known as Tower, Classen & Co., he bequeathed whatever interest he had in the firm of Tower, Classen & Co. directly to Renick for

certain purposes, which will be explained more fully by the paragraph in the will relating thereto: "whereas I have and hold in my name an interest in the firm of Tower, Classen and Co., manufacturers of a chromatic printing press, which Company are manufacturing such printing presses at Canton, Ohio, and which interest was paid for out of funds belonging one third to myself, one third to my sister Mary Crook, and one third to my nephews and nieces, children of my brother Jonathan Renick, deceased, it is my request that the whole interest in said Company be held and retained so long as my brother Benjamin F. Renick may, in his discretion, think the same will be profitable, and I desire that the same shall be under the control and management of said Benjamin F. Renick, and as to my interest in the same, I desire that it shall be held, controlled, and managed by my said brother Benjamin F. for the benefit of himself and my nephews and nieces, the children of my sister Catherine Darst, deceased, the children of my brother Jonathan Renick, deceased, and Henry R. Crook, the son of my sister Mary Crook, share and share alike, and I give and bequeath all my interest in the said company to my said brother Benjamin F. Renick in trust for himself and my said nephews, and nieces above named, in equal proportions, to be held, retained, and controlled by my said brother Benjamin F., so long as he, in his discretion, may deem advisable; my meaning is that each nephew and each niece is to take one share with my brother Benjamin."

Shortly after the death of Thomas T. Renick, letters executory were issued to Benjamin F. Renick, as his executor under the will. Some time after that, but just precisely what time is not disclosed by the testimony, Benjamin F. Renick purchased the interest of Tower in the firm of Tower, Classen & Co., and the co-partnership name of Tower, Classen & Co. was from that time changed to that of B. F. Renick & Co. As executor of Thomas T. Renick, Benjamin F. Renick came into possession of the notes which had been given by Harvey to Thomas T. Renick. These notes were not payable to Thomas T. Renick, executor of Renick Houston, nor was there anything on their face to show that the debt was due to the estate of Renick Houston, but so far as appears upon their face, the notes were the property of the estate of Thomas T. Renick. In the month, or at the time the notes became due—the first note became due

—the note of July, 1874—it will be remembered these notes became due in 1873, 1874 and 1875—about the time the second note in the series fell due, the parties who had become interested in the property applied for an extension of time. A negotiation was entered into in which a Mr. Palmer C. Smith, who had with Job R. Renick become the executors—I would say administrators—with the will annexed, of Renick Houston, and was also the attorney, or claimed to be the attorney of the estate of Thomas T. Renick, entered into an agreement with these gentlemen by which these two notes, maturing in 1874 and 1875, were to be extended for a term of two years. This first agreement was signed by Palmer C. Smith, attorney for the estate of Thomas T. Renick, and executor or administrator, with the will annexed, of the estate of Renick Houston. On this stipulation being presented to the attorney of the parties, they objected to it for want of power, and said they wanted the executor of the estate of Thomas T. Renick, to whom the notes were payable, to consent to the extension; and such proceedings and negotiations were had, that some time in the winter of 1874 and 1875, after the notes were due, an agreement in writing was entered into and signed by Benjamin F. Renick, as the executor of Thomas T. Renick, in which he substantially recited that inasmuch as it was impossible at that time for him to close the affairs of the estate of Thomas T. Renick, owing to litigation and various other reasons, and as the makers of the notes and the parties interested in the property were desirous of an extension, he therefore agreed that the time for the payment of these two notes should be extended to the term of two years from the time they matured respectively, provided he should not be required at an earlier day to use the money for the purpose of distribution in the estate. This contract was, as I said before, signed in due form, and there was also endorsed upon the notes a memorandum of the extension, in these words:

"CHICAGO, February 19, 1875.

"Payment of the within note extended as per contract "of September 12th, 1874, now in the hands of James P. "Goodman, Esq., for a period not exceeding two years, "from July 15th, 1874."

The note matured July 15th, 1874. The contract for extension, which had originally been made with Mr. Palmer C. Smith, as the attorney of the estate of Thomas

T. Renick, was dated on the 12th of September, and this contract, signed by Benjamin F. Renick, as the executor of Thomas T. Renick, was dated back to the same date, but, in point of fact, was not made and delivered till the 19th of February; and, on the same day, there was endorsed upon the back of each of these two notes this memorandum:

" Payment extended as per the contract of September " 12th, 1874, now in the hands of James R. Goodman, " Esq., for a period not exceeding two years from July " 15th, 1874. (Signed) J. Edwards Fay, trustee; B. F. " Renick, executor of Thomas T. Renick, deceased."

In the month of May, 1875—a year ago last May—B. F. Renick & Co., which was the successor of the old firm of Tower, Classen & Co., referred to in the will of Thomas T. Renick, applied to J. C. Ayer & Co., of Lowell, Massachusetts, for a loan of some $39,000 in money, and offered to secure the same by their notes—by the notes of the firm of B. F. Renick & Co., with this Harvey note, or one of these Harvey notes, as collateral security. The business was referred by J. C. Ayer & Co. to Messrs. Goudy and Chandler of this city, to examine and report as to the sufficiency of the security offered. Mr. Goudy took charge of the business here, and investigated the condition of the securities. He ascertained that Mr. Harvey, and those who were associated with him, set up no defense to the note for the purchase money of this land; that they expected to pay it according to the terms of the extension; and also, on examination, found upon the back of the notes the endorsement of the extension. He asked, as a person naturally would, on reading the endorsement on the back of the note, that it was extended as per terms of contract in the hands of Mr. Goodman—he asked to see the contract in the hands of Mr. Goodman, and was shown the contract signed by B. F. Renick, as executor of Thomas T. Renick, extending the time for payment of the note in the manner which I have already stated—that is, provided it was not needed before that time for the purposes of the estate.

Mr. Goudy, in the course of his investigations, did not learn that any other person was interested in this note, than the estate of Thomas T. Renick. He did learn that the loan was for the benefit of the firm of B. F. Renick and Company; and learning that fact, he asked, as one naturally would, why he, as executor of Thomas T.

Renick, proposed to secure a debt of B. F. Renick & Co. with the assets or note belonging to the estate of Thomas T. Renick. He was then referred to the will of Thomas T. Renick, and read the will, and examined the clause in reference to the interest which the testator had in the firm of Tower, Classen & Co., and was informed that the firm of B. F. Renick & Co. was Tower, Classen & Co., with the exception that Tower had gone out, and B. F. Renick had taken his place. Learning these facts, and these only substantially, Mr. Goudy recommended his clients to accept the loan; and they accordingly loaned to B. F. Renick & Co., on their note, the sum of $39,250, secured by the Harvey note, which matured on the 15th day of July, 1874, but had been extended, as I have already mentioned, as security.

Some time in June, after the transaction with J. C. Ayer & Co., the firm of B. F. Renick & Co. applied for a further loan, and requested Mr. J. Edwards Fay, an attorney in this city, to negotiate with some persons for a loan of $30,000 for said firm, which was to be secured by the other of these Harvey notes; that is, the note that fell due in July, 1875, as collateral security. Mr. Fay applied, under this employment, to the bank at Westborough, Massachusetts—the First National Bank of Westborough—for this loan. He represented to the bank, or the officers of the bank rather, the condition of the securities; that it had been extended for the term of two years from the time when it matured upon its face; that it was secured upon ample real estate to make its payment sure; and further represented to them that Messrs. J. C. Ayer & Co., of Lowell, had advanced the sum of $39,000 upon the other note, and that Mr. Goudy had investigated the security for them, and reported favorably upon it. He further reported to them the relation which B. F. Renick bore as executor to the firm of B. F. Renick & Co., the old firm of Tower, Classen & Co., and the will of Thomas T. Renick was explained. From these representations and explanations, the bank concluded to make the loan requested, and did loan to B. F. Renick & Co. $30,000, which was secured by the Harvey note as collateral.

Shortly after this transaction, Palmer C. Smith and Job R. Renick, as administrators, with the will annexed, of Renick Houston, filed these two bills, one against Harvey and Goodman, Bonney, Fay, and J. C. Ayer & Co., to set aside the transaction with J. C. Ayer & Co., and

the other against the same parties and the bank at Westborough; to set aside the transaction with the bank at Westborough, claiming that these two notes belonged to the estate of Renick Huston, and did not belong to the estate of Thomas T. Renick, and that it was a waste of said estate, and fraud upon those interested therein, to assign these notes in the manner they had been assigned by B. F. Renick, the executor of Thomas T. Renick.

These are the bills now under consideration. The proof shows substantially the facts which I have stated. The complainants insist that this transaction was void, first, because so far as the J. C. Ayer & Co. note was concerned, the note was due which they now hold as collateral at the time they took it, and that therefore they took it subject to all equities; and that, inasmuch as the note in fact did not belong to the estate of Thomas T. Renick, but belonged to the estate of Renick Huston, therefore the heirs of Renick Huston, or rather the representatives of Renick Huston, can hold the note as against J. C. Ayer & Co.; secondly, it is claimed that this transaction was void, because enough appears upon the face of the paper, or upon all the paper, to put J. C. Ayer & Co., or their attorneys, upon inquiry as to the ownership of this money; and, thirdly, their claim is that this transaction should be set aside, because as executor of the estate of Thomas T. Renick, Benjamin F. Renick had no authority to make this loan, or pledge these assets of the estate of Thomas T. Renick for the benefit of the firm of B. F. Renick & Company. I have examined the law which has been quoted bearing upon these various positions, and must say that I do not think the positions are sustained by the authorities.

First. The claim that the J. C. Ayer note was taken subject to all equities. The familiar and well known rule of law is cited and invoked in this case by the complainant as controlling: that is, that a person taking a piece of commercial paper after due, takes it subject to all equities. I think the rule is well settled, however, that this rule only extends to the equities between the parties to the note; that is, if I purchase a promissory note or a bill of exchange after due, if dishonored I take it subject to any suit which the maker or the acceptor may have against it —subject to any equities and any defense which he may have against it,—but not to any third person, not to the equities of any third person, who is in any way suggested

by the testimony as having any interest in it. Now, Thomas T. Renick was the apparent owner of this note. There was nothing upon the face of the note, and nothing on the face of the paper, or in the chain of title to the land for which the note was given, to indicate that it belonged to the estate of Renick Huston. The title to the land was in Job R. Renick. It says that he held it as a naked trustee; and there was nothing upon the record that showed that he held it in trust for any one. He was, as far as the record showed, the absolute owner. The notes for the purchase money of the land were taken from Harvey to Thomas T. Renick, and they do not show that he held them in any representative capacity. The purchasers of these notes, or rather the assignees or pledgees, I had better call them, received this note, then, if it was to be considered as over due paper, subject to the equities between the original parties, that is, if Harvey, the maker, had no defense against it, he received it subject to these equities. But further than that, it seems to me the title must be considered as unimpeached in his hands; but I doubt whether this paper should be considered as over due paper. By the terms of the agreement in writing, endorsed upon the back of the note, and in the hands of Mr. Goodman, when all taken together, the time for the payment of the note had been extended for the term of two years, unless Benjamin F. Renick, the executor, should be called upon at an earlier day to distribute the moneys belonging to the estate, coming from this source. This contract must therefore be construed at least to be an extension until notice or demand,—a valid legal extension; and the makers of the note undoubtedly would be entitled to demand a reasonable notice of the payment of the note before they could be required to pay it after this extension, because it was an extension made upon a valid agreement to pay interest during the term of extension, and therefore binding upon the parties; so that I doubt whether it was necessary to treat this, or to consider it, for the purposes of this case, as dishonored paper. I think the paper was paper which had not, so far as it then stood, matured. The payment had not been called for by the executor. The court at Chippewa, having control of the estate of Thomas T. Renick, had not directed a distribution of these funds; and therefore there was, so far as the record goes, an extension for the time of two years, and not exceeding two years, upon the paper. But

suppose it was to be considered as over due paper, then I think the purchaser took it as he would have taken a chattel. Suppose it had been so much money, which passed from hand to hand, belonging in the hands of Benjamin F. Renick, as executor of Thomas T. Renick, and he had turned it out as collateral security. Now, the complainants claim that as administrators with the will annexed of Renick Huston, they were the owners or parties beneficially interested in this note. They had for two years, or over two years then, allowed this note to remain in the hands of Benjamin F. Renick, when it ought to have been in their hands; and after the death of Thomas T. Renick they had allowed this note to remain in the hands of Benjamin F. Renick, when it ought to have been in the hands of the executors of Renick Huston. They allowed him to be in a position where he perpetrated a fraud upon somebody by turning this collateral out. Supposing it had been a chattel of any kind, which he transferred from hand to hand, and which having possession of, he was presumed to be the owner of. It seems to me that having allowed him to retain possession of it, they are bound by whatever he does with it; that is, as between him and a party who pays value; of course, not as against a party who obtained it from him fraudulently. So far as this point, then, is concerned, and this point has reference only to the J. C. Ayer & Co. note, I think the position taken by the counsel is not tenable.

With reference to the question whether there was enough on the face of the record to put them on inquiry, it was urged by Messrs. Miller & Frost, with much apparent sincerity and earnestness, that Mr. Goudy was guilty of negligence in making his investigation, because he did not go personally to Mr. Goodman and call for these two contracts which were in his hands, with reference to the extension. I have already said that this extension was accomplished by the two contracts soon after the note matured; Palmer C. Smith, claiming to act as attorney for the estate of Thomas T. Renick, and as administrator with the will annexed of Renick Huston, signed the stipulation for this extension. That was not satisfactory to the attorneys to whom Mr. Goodman submitted the agreement; and he directed Mr. Goodman to obtain an agreement directly from Mr. B. F. Renick, which he did obtain in February. The endorsement was placed upon the back of the note on the 19th of Febrnary, as appears upon

its face, and so appears by the evidence; and refers only to the agreement between B. F. Renick and Mr. Goodman in the hands of Mr. Goodman. It does not refer to the prior agreement between Smith and Goodman. It does not state that there are two agreements in the hands of Goodman, but one; and on Mr. Goudy's calling for that agreement, he was presented with a true copy of it, and was content with the investigation which he made of that copy; and there is no doubt but what he had a copy of the proper instrument. But it is claimed he should have gone further, and found out how many agreements there were. I cannot quite charge Mr. Goudy with diligence to that extent, I think he was only required to look at the agreement which was referred to on the back of the note for the purpose of ascertaining the terms of the extension, and that agreement he did look at, and that agreement he was satisfied with. It seems to me that is all he was bound to do.

Now, there is nothing else upon the record. It is said that if Mr. Goudy had called for the other agreement made by Palmer C. Smith, he would have found that Palmer C. Smith had signed as representative of the estate of Thomas T. Renick and of Renick Huston. Well, I can hardly admit the force of the argument, because all the appendages that a man puts to his name are not necessarily notice of the interests of various parties that are there represented. Mr. Palmer C. Smith, as the attorney of the estate of the payee of the note, might properly append to his name that function or office; and when he also says he represented somebody else, I think that must go for nothing. Suppose he said "Palmer C. Smith, attorney of the estate of Thomas T. Renick, and of Renick Huston," what of Renick Huston? Was he obliged to look into the entire complications of the estate of Renick Huston, simply because Mr. Smith put that appendage to his name? I think not. I do not think diligence required that he should follow up so slight a scent as that for the purpose of ascertaining a possible contingent interest he might have in the note. The person who had a right to transfer the note in the market, to endorse and to assign it, had consented to the extension. That was B. F. Renick in person, and B. F. Renick by his attorney, although B. F. Renick by his attorney, Mr. Smith, does not appear in the case, in the investigation made by Mr. Goudy. So that I think the argument on that point is too far-fetched; and it requires a degree of diligence that the law does not require

of persons purchasing commercial paper, to investigate into collateral interests and collateral possibilities. It is enough that he ascertained that the parties have no interests that are adverse to the interests which he represents.

I come now for a moment to consider the third point which is made; and that is, that as executor of the estate of Thomas T. Renick, Benjamin F. Renick had no right o use these notes in and about the business of B. F. Renick & Co., or Tower, Classen & Co.

It will be noticed that the will of Thomas T. Renick clothes Benjamin F. Renick with full discretion to retain the interest in this firm, and manage it in his own way as long as he chose. This necessarily involves the retention of the capital of Thomas T. Renick's estate in there, and the addition to that capital if the exigencies of the firm and the business required it; and I think but very little can be said after you have said that. The grant of power to the executor is so ample a discretion, and is so complete that it seems to me any one examining the will for the purpose of ascertaining the powers of Benjamin F. Renick in and about the assets of this concern would say:

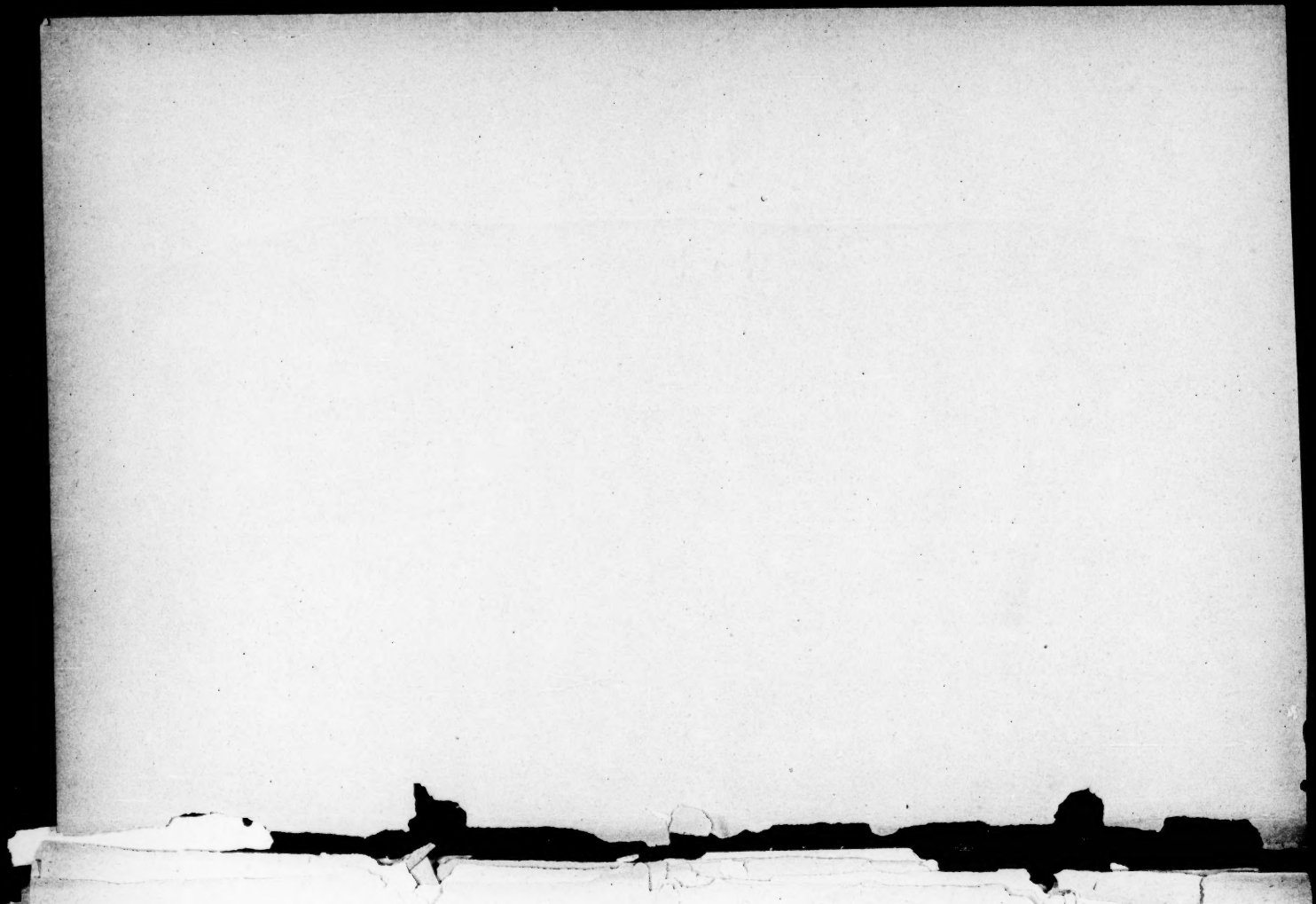
"Of course this man is authorized to use the assets that are in his hands as executor of Thomas T. Renick in and about the business of this firm."

It has been alleged by the defendant's counsel that without the will, if the executor of Thomas T. Renick saw fit to endorse these notes, and they were endorsed for value, the holder would take a good title. I perhaps could hardly sanction this doctrine to the extent in this case that it is claimed, because the evidence shows that both the bank at Westborough and J. C. Ayer & Co. knew when Benjamin F. Renick sought to obtain this loan, that it was the intention of Benjamin F. Renick to use this money, not about the estate of Thomas T. Renick, but about the firm business of B. F. Renick & Company; and so they had notice that he did not negotiate these notes or pledge them for the purpose of raising money to settle the estate, or to pay the debts of the estate of Thomas T. Renick, but he used them for the purpose of carrying on the business of Tower, Classen & Co., which had become B. F. Renick & Company. But it will be observed that while the law clothes the executor with power to negotiate and dispose of the negotiable notes and paper belonging to the estate in open market, the same as the original testator

might do, the notes negotiated by the executor before due stand like any other negotiable paper.

Now, there can be no doubt but what B. F. Renick would have had the right, as the executor of Thomas T. Renick, for the purpose of paying the debts of Thomas T. Renick, to have sold these notes, and paid these debts with the proceeds. Now, it is but another step — it is the same thing in result — the firm of Tower, Classen & Company became indebted; the estate of Thomas T. Renick is liable for these debts; the liability has been continued by the will; and the executor of Thomas T. Renick is bound personally and representatively for that indebtedness; and he may therefore, it seems to me, use the assets of the estate for the purpose of discharging the liability.

The bill in both cases will therefore be dismissed.



IN THE

Supreme Court of the United States,

October Term, A. D. 1878.

P. C. SMITH, et al.,
Appellants,
vs.
J. C. AYER & CO.,
Appellees.
221.

Supplemental Brief for Complainants.

MILLER & FROST.

CHICAGO:
PRESS OF BEACH, BARNARD & CO., LEGAL PRINTERS, NO. 104 RANDOLPH STREET.
1879.

IN THE

Supreme Court of the United States,

October Term, A. D. 1878.

P. C. SMITH, et al.,
Appellants,
vs.
J. C. AYER & CO.,
Appellees.
221.

Supplemental Brief for Complainants.

I.

The note, which by this proceeding we are endeavoring to have restored to the estate of Thos. T. Renick contains the following endorsement, (page 85 of printed Record):

" CHICAGO, February 19th, 1875.

" Payment of the within note extended as per contract " of September 12th, 1874, now in the hands of James B. " Goodman, Esq., for a period not exceeding two years " from July 15, 1874.

(Signed) " J. EDWARDS FAY,
Trustee, etc.
" B. F. RENICK,
" *Executor and Trustee of Thomas*
" *T. Renick, deceased.*"

The note when offered to J. C. Ayer & Co., in May, 1875, as collateral security for the note of B. F. Renick & Co., was ten months past due, and the endorsement was then upon it. This endorsement upon the note, put the person who was about to receive it upon inquiry, as to the contents of the contract mentioned in the endorsement; as much so as if the subject of the transfer had been real estate.

Wade, on the Law of Notice, says, § 332, page 144, that there is no difference in principle between the effect of recitals in papers, by which the title to real and personal property is transmitted, when the latter is conveyed, or affected by written instruments. The inquiry the purchaser is under obligation to make, by reason of his knowledge of a writing does not stop short of an inspection of the writing itself.

Wade on Notice, § 335.

Christmas v. *Mitchell*, 3 Ired. Eq., 535, (N. C.)

The agreement recited in the endorsement of this note was expressed in two papers, which were left with James B. Goodman at his office in Chicago, one signed by P. C. Smith, one of the administrators, and attorney for the estate of Renick Huston and Thomas T. Renick, and dated September 12th, 1874, and the other signed by Benj. F. Renick as the executor of Thomas T. Renick on the 1st of February, A. D. 1875, but dated back to 12th of September, 1874, which was also delivered to Mr. Goodman, and both papers have since been in his possession. (See page 82 of printed record.)

Mr. Goudy did not inquire of Mr. Goodman for this agreement, or inspect either of these papers. He says, (see page 87 of printed record), that when he was examining this matter for J. C. Ayer & Co., "there was shown "to me by B. F. Renick a duplicate or copy of the agree-

" ment, dated September 12th, A. D. 1874, signed by Benj. " F. Renick, executor of the last will of Thos. T. Renick, " deceased, and with a stipulation thereto appended, " signed by J. Edwards Fay, trustee, &c., which I exam- " ined, but I did not see a paper or copy of the one of " same date signed by P. C. Smith, one of the adminis- " traators and attorney for the estate of Renick Huston " and Thomas T. Renick, and never heard of it until since " this suit has been commenced."

The agreement, as stated in the endorsement upon the note, was then in the hands of Mr. Goodman, and if he had been called upon for it, he would have shown to the inquirer both papers, the one executed by the party representing the estate of Renick Huston, and the other by the executor of Thomas T. Renick. The first paper contains a distinct recital that this note then belonged to the estate of Renick Huston, and not to the estate of Thomas T. Renick.

Mr. Goudy made no inquiry of Mr. Goodman respecting the matter, did not call for the original agreement, but simply received from Benj. F. Renick, the borrower of the money, what purported to be a copy of the paper signed by himself. He says, in his statement, that he saw either a duplicate or a copy of the paper. We have a right to assume, under this statement, that the paper he saw was simply a copy. He was informed in the endorsement upon the note, that the agreement itself which he should have inspected, was in the hands of Mr. Goodman, whose office was in Chicago.

If he had called upon Mr. Goodman, and Mr. Goodman had shown him the paper executed by B. F. Renick only, as containing the agreement referred to in the endorsement upon the note, then he would have made the inquiry he was required to make, and would have been justified in relying upon the information he thus obtained. Instead

of this, he sought information from B. F. Renick, who was interested in making a misapplication of the note, and therefore in concealing from him the fact that the note really belonged to the estate of Renick Huston.

He relied upon the information thus obtained, and was of course misled, but, we insist through his own neglect. The duty of making this inquiry he owed to the complainants, the representatives of the estate of Renick Huston, and it should have been addressed to the person with whom the agreement, executed in their behalf, had been left, that is to Mr. Goodman, and they would have been bound by whatever reply Mr. Goodman should make.

If, in answer to such inquiry, he had produced an agreement other than the one left with him, they would have been bound by his acts, for they had made him the custodian of the paper. He had no motive to withhold either paper, and would undoubtedly have produced them both, as together constituting the agreement granting the extension.

It is manifest that these two papers were drawn by the same party, and it appears from the testimony of Mr. Smith, that Fay drew the first paper. He must have drawn the second also, for both precisely agree in mode of expression, and only differ in the fact that in the second paper all reference to the estate of Renick Huston is omitted. While the purchasers from the Chicago Land Company, who were interested in having this extension granted, desired an agreement from parties representing both estates, it is manifest that Mr. Fay, when he drew the paper signed by Benjamin F. Renick, as executor of the estate of Thomas T. Renick, was then contemplating the fraud which a few months later he assisted in practicing upon the persons interested in the estate of Renick Huston, and the misfortune of the defendants J. C. Ayer & Co., is that they and their counsel, by trusting him, un-

consciously participated in it. The complainants, who were wholly ignorant of this proceeding, and had never authorized it in any way or manner, are wholly without fault, and should not be made to bear the loss.

II.

Wholly apart from the notice contained in this agreement in the hands of Goodman, there was enough in the transaction to put J. C. Ayer & Co. upon inquiry respecting the interest which the representatives of Renick Huston had in this note.

The two notes, the one now held by J. C. Ayer & Co., and the one held by the Westboro Bank, were secured by a trust deed executed by Joel D. Harvey to J. Edwards Fay, trustee. Mr. Goudy says in his statement (see page 85 of printed record): "I also examined the deed of trust se- "curing said notes, and an abstract of the title of the land "described in said deed."

The following facts, which appeared in said abstract, are admitted. (See pages 70, 71 and 72 of printed record.)

That the land described in this trust deed was devised to Renick Huston, by his father, Andrew Huston; that on the 19th of September, 1863, a petition was filed in the County Court of Cook County, Illinois, by the Public Administrator of Cook County, Julius Rosenthal, for leave to sell the real estate of Andrew Huston, in said county, to pay the debts of Andrew Huston, and that on the 12th of July, 1871, this property was sold to Job R. Renick in that proceeding, and conveyed to him by said administrator. That on the 28th day of May, A. D. 1868, a bill was filed in the Circuit Court of the United States, for the Northern District of Illinois, against Thomas T. Renick, as executor of Renick Huston, for the purpose of compelling a sale of the real estate, of which Renick Huston died seized, in the

manner directed by the will, in order to raise funds to pay the bequests therein, and in that suit this same property was sold on the 11th day of July, 1871, to Job R. Renick, and in pursuance of such sale, conveyed to him by Thomas T. Renick, as executor of Renick Huston.

The manifest object of these two proceedings was to divest the title of Andrew Huston and his son, Renick Huston, in this land, and place it in Job R. Renick, in order that it might be conveyed to a purchaser. On the 15th of July, 1872, in pursuance of a sale previously made by Thomas T. Renick, this property was conveyed to Joel D. Harvey, by Job R. Renick and Thomas T. Renick, as administrator with the will annexed of Andrew Huston, and as executor of the will of Renick Huston, and in his own right.

It is apparent from the deeds executed and the notes given to secure the purchase money, that this sale was not made for or on account of Job R. Renick, who held the legal title, for the notes were payable to Thomas T. Renick, and any proper inquiry would have disclosed the fact, that the cash payment was also made to Thomas T. Renick. Indeed, it is admitted in the answer of J. C. Ayer & Co. (see pages 31, 32 of printed Record), that Job R. Renick and Thomas T. Renick, in consideration of $157,000, sold and conveyed this land to Joel D. Harvey, and that upon the delivery of the deed conveying it, Harvey paid $39,250 in cash to Thomas T. Renick, and for the balance, executed and delivered his three promissory notes, dated the 15th of July, 1872, for the sum of $39,250 each, payable, respectively, in one, two and three years from date, to the order of said Thomas T. Renick, with interest at 8 per cent. per annum, and that to secure the payment of said notes, he executed and delivered his trust deed, &c.

While Job R. Renick conveyed the land, he did not receive any of the consideration for it.

Though it does not appear that all these facts were known to J. C. Ayer & Co., they did know that two of the notes, being one-half the purchase money for the land, were payable to Thomas T. Renick, and that for them he executed a deed, as executor of the will of Renick Huston, and in his own right.

It would appear, therefore, from the papers, that at the time of this sale to Harvey, Job R. Renick held the title to this land, as trustee for Thomas T. Renick, and the devisees of Renick Huston, and that the two notes belonged to the parties thus beneficially interested in the land. It appearing that Job R. Renick took no beneficial interest in the land, by the conveyances made to him through the agency of these judicial sales, but simply the naked legal title, the inference would be that this beneficial interest belonged to the party who joined with him in a conveyance to the purchaser, and as Thomas T. Renick as executor of the estate of Renick Huston joined in such conveyance, he, in that character, owned this beneficial interest, or at least a portion of it, and was consequently interested as such executor in these notes.

This we insist was sufficient to put the defendants upon inquiry, which, if prosecuted, would have disclosed the fact that the representatives of that estate owned both of them.

If in the investigation of a title a purchaser with common prudence must have been apprised of another right, notice of that right is presumed.

Reeder v. *Barr*, 4 Ohio, 458.

III.

There is not only no evidence showing or tending to show that this money was borrowed by B. F. Renick & Co. of J. C. Ayer & Co. to pay the debts of Tower, Classen & Co., which existed at the time of the death of Thomas T. Renick, but the evidence is clear that it was not borrowed for any such purpose.

Mr. Goudy says in his statement (see p. 85 of printed record): "The said Benjamin F. Renick informed me "that he wished to use the money borrowed, in the busi- "ness of Benjamin F. Renick & Co., as manufacturers of "Chromatic Printing Presses." At page 87 he says: "I "was also informed by said Benjamin F. Renick and said "Fay, that the firm of Benjamin F. Renick & Co., was "perfectly responsible for the amount of said loan, inde- "pendent of said collateral security, and that they were "able to pay the interest when it accrued, and the princi- "pal when it matured, without question. I was also in- "formed by Mr. Avery that Mr. Reed had made exam- "inations in New York, where Benjamin F. Renick & Co. "were well known, as to their financial condition and "credit and that they were reported by responsible banks "with whom they dealt, to be perfectly responsible "for any debt they would contract, and such was in fact "the reputation of the firm of Benjamin F. Renick & Co., "at that time in New York, and at Canton, Ohio, where "they did business."

Thomas T. Renick died in August, 1873, and while there is no evidence that the firm of Tower, Classen & Co. were indebted at the time of his death, it is impossible that its successor, B. F. Renick & Co., should have been in such excellent credit in May, 1875, if the indebtedness of the old firm had not then been fully discharged.

MILLER & FROST,
For Complainants.

IN THE

SUPREME COURT of the UNITED STATES

OCTOBER TERM, 1878.

PALMER C. SMITH AND JOB R. RENICK, ADMR'S, ETC., ET AL.,

versus

FIRST NATIONAL BANK, OF WESTBORO, ET AL.

SAME, *vs.* J. C. AYER & CO., ET AL.

APPEAL

From the Circuit Court of the United States for the Northern District of Illinois.

Union-Herald Job Printing House, Circleville, Ohio.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1878.

PALMER C. SMITH AND JOB R. RENICK, ADMR'S, ETC., ET AL.,

versus

FIRST NATIONAL BANK, OF WESTBORO, ET AL.

SAME, *vs.* J. C. AYER & CO., ET AL.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

Renick Huston, of Pickaway county, Ohio, departed this life the owner of some lands, near Chicago, Illinois, and leaving a will appointing Thomas T. Renick, also of said Pickaway county, his Executor, and authorized said Executor to dispose of said lands. Said Executor qualified before the Probate Court, of Pickaway county, Ohio, and entered upon the discharge of the duties of said trust, and in the discharge of the duties of said trust, he sold some of those lands and took notes in his own name for the deferred payments. In 1873 Thomas T. Renick departed this life testate, appointing Benjamin F. Renick his Executor, who was qualified as such Executor by the Probate Court, of Pickaway county, Ohio, and the said Benjamin entered upon the discharge of the duties of said Executor.

At the time of the death of said Thomas T. Renick he was a member of the firm of Tower, Claassen & Co., a firm composed of Peter G. Tower, Peter J. Claassen and Thomas T. Renick, and who were engaged in the manufacture of Chromatic Printing Presses, at Canton, Ohio.

Benjamin F. Renick, in March, 1874, and after the death of said Thomas T. Renick, became a member of the firm of B. F. Renick & Co., which firm was not formed until the month of March, 1874, and until after Peter G. Tower, the head of the firm of Tower, Claassen & Co., had sold out his interest in the firm to said Benjamin F. Renick and retired from the firm, and the said firm of Tower, Claassen & Co. had ceased to exist.

The defendants, J. C. Ayer & Co., and the Westboro Bank, in both these cases, made loans to the firm of B. F. Renick & Co., and received the notes in controversy, belonging to the estate of Renick Huston, as collateral security for said loans.

The Executor of Thomas T. Renick, in indorsing the notes in controversy in these cases to the firm of B. F. Renick & Co., committed a gross breach of trust—amounting to a fraud—against the estate of Renick Huston, as well as against the estate of Thomas T. Renick.

The attorney of the defendant knew that this note was being used by this Executor for his individual use, and not for the purpose of the estate.

The attorney of the defendant knew that the Executor was about to commit a fraud on these estates.

The knowledge of the attorney is the knowledge of the principal.

The Distilled Spirits, 11th Wall, 356.

The rule is stated in the fifth paragraph of the syllabus of the case, as follows: "The rule that notice to the agent is notice to the principal, applies not only to knowledge acquired by the agent in the particular transaction, but to knowledge acquired by him in a prior transaction, and present to his mind at the time he is acting as such agent, provided it be of such a character as he may communicate to his principal without breach of professional confidence."

In Abell vs. Howe, 11th A. M. Law Reg., 148, the Court held that: "If the attorney had notice of the trust the law will presume the notice was communicated to the client."

See Hart vs. F. & M. Bank, 33d Vt., 252.

"When a person takes a negotiable security, which, upon the face of it is dishonored, he cannot," says Taney, C. J., "be allowed to claim the privilege which belongs to a bona fide holder."

Andrews vs. Pond, 13th Pet., 65.

"If he chose to receive it, under such circumstances, he takes it with all the infirmities belonging to it, and is in no better condition than the person from whom he received it. The same doctrine was enforced and applied in a subsequent case, when in speaking of a promissory note so marked as to show for whose benefit it was discounted. The Court held that all those dealing in paper with such marks on its face must be presumed to have knowledge of what it imported."

Fowler vs. Brantley, 14th Pet., 320.

The note in the case of Fowler vs. Brantley had been purchased for value before due, and is convincing authority that the defendants in this case have no title to the paper in controversy.

"Actual notice in such a case is not required, even in suits founded upon negotiable security, when the evidence of its infirmity consists of matters apparent upon its face. * * * * Constructive notice in such case is held sufficient upon the ground that when a party is about to perform an act which he has reason to believe may affect the rights of third persons, an inquiry as to the fact is a moral duty, and diligence an act of justice."

Angle vs. N. W. Mutual Life Ins. Co., 92d U. S. Rep., 342.

Whatever fairly puts a party upon inquiry in such a case is sufficient notice in equity, when the means of knowledge are at hand, and if the party, under such circumstances, omits to inquire, and proceeds to do the act, he does so at his peril, as he is then charge-

At the time of the death of said Thomas T. Renick he was a member of the firm of Tower, Claassen & Co., a firm composed of Peter G. Tower, Peter J. Claassen and Thomas T. Renick, and who were engaged in the manufacture of Chromatic Printing Presses, at Canton, Ohio.

Benjamin F. Renick, in March, 1874, and after the death of said Thomas T. Renick, became a member of the firm of B. F. Renick & Co., which firm was not formed until the month of March, 1874, and until after Peter G. Tower, the head of the firm of Tower, Claassen & Co., had sold out his interest in the firm to said Benjamin F. Renick and retired from the firm, and the said firm of Tower, Claassen & Co. had ceased to exist.

The defendants, J. C. Ayer & Co., and the Westboro Bank, in both these cases, made loans to the firm of B. F. Renick & Co., and received the notes in controversy, belonging to the estate of Renick Huston, as collateral security for said loans.

The Executor of Thomas T. Renick, in indorsing the notes in controversy in these cases to the firm of B. F. Renick & Co., committed a gross breach of trust—amounting to a fraud—against the estate of Renick Huston, as well as against the estate of Thomas T. Renick.

The attorney of the defendant knew that this note was being used by this Executor for his individual use, and not for the purpose of the estate.

The attorney of the defendant knew that the Executor was about to commit a fraud on these estates.

The knowledge of the attorney is the knowledge of the principal.

The Distilled Spirits, 11th Wall, 356.

The rule is stated in the fifth paragraph of the syllabus of the case, as follows: "The rule that notice to the agent is notice to the principal, applies not only to knowledge acquired by the agent in the particular transaction, but to knowledge acquired by him in a prior transaction, and present to his mind at the time he is acting as such agent, provided it be of such a character as he may communicate to his principal without breach of professional confidence."

In Abell vs. Howe, 11th A. M. Law Reg., 148, the Court held that: "If the attorney had notice of the trust the law will presume the notice was communicated to the client."

See Hart vs. F. & M. Bank, 33d Vt., 252.

"When a person takes a negotiable security, which, upon the face of it is dishonored, he cannot," says Taney, C. J., "be allowed to claim the privilege which belongs to a bona fide holder."

Andrews vs. Pond, 13th Pet., 65.

"If he chose to receive it, under such circumstances, he takes it with all the infirmities belonging to it, and is in no better condition than the person from whom he received it. The same doctrine was enforced and applied in a subsequent case, when in speaking of a promissory note so marked as to show for whose benefit it was discounted. The Court held that all those dealing in paper with such marks on its face must be presumed to have knowledge of what it imported."

Fowler vs. Brantley, 14th Pet., 320.

The note in the case of Fowler vs. Brantley had been purchased for value before due, and is convincing authority that the defendants in this case have no title to the paper in controversy.

"Actual notice in such a case is not required, even in suits founded upon negotiable security, when the evidence of its infirmity consists of matters apparent upon its face. * * * * Constructive notice in such case is held sufficient upon the ground that when a party is about to perform an act which he has reason to believe may affect the rights of third persons, an inquiry as to the fact is a moral duty, and diligence an act of justice."

Angle vs. N. W. Mutual Life Ins. Co., 92d U. S. Rep., 342.

Whatever fairly puts a party upon inquiry in such a case is sufficient notice in equity, when the means of knowledge are at hand, and if the party, under such circumstances, omits to inquire, and proceeds to do the act, he does so at his peril, as he is then charge-

able with all the facts, which, by a proper inquiry, he might have ascertained. Ib. ib., and the cases there cited.

If, therefore, a purchaser knows, or has notice, that a sale by an Executor is fraudulent, or collusive, or is a devastavit, or is *for the purpose of a misapplication of the assets*, his title will not be allowed to prevail against the beneficial interest of creditors, legatees, or heirs.

Dickenson vs. Lockyer, 4th Vesey, 36, and N.

II.

In the case of Field vs. Schaffelin, 7th, J. Ch. 150, where a guardian had sold a bond and mortgage, taken in the name of the guardian, but which belonged to his ward, the Chancellor, on page 153, says: "If there was any fraud or collusion, or if the plaintiff knew, or was sufficiently informed, when he accepted the bond and mortgage, that the guardian had in *contemplation a breach of trust, and intended to misapply the moneys, then I apprehend that the plaintiff must be deemed to have taken the bond and mortgage in trust for the infant.*"

Hill vs Sampson, 7th Vesey, 152.
Story's Eq. Jr., Secs. 422, 423, 1257.

The loans made by the Westboro Bank, and by J. C. Ayer & Co., were both made to the firm of B. F. Renick & Co., and for the use of that firm.

The Bank, and J. C. Ayer & Co. both looked to that firm for the repayment of the money loaned—the notes in controversy were transferred as collateral security for these loans.

The Bank and Ayer & Co. both knew that this money was borrowed by B. F. Renick & Co. for their individual use.

In the case of Lowrie vs. C. & M. Bank of Maryland, Taney's C. C., Decs. 310, it was held by Taney, C. J., "That if a party dealing with an executor has, at the time, reasonable ground for believing that he intends to misapply the money, or is in the very transaction applying it to his own use, the party so dealing is responsible to the person injured."

In the case of Shaw vs. Spencer, 100th Mass., 389, the Court say, that when a certificate of stock expressed in the name of "A. B., Trustee," is by the "trustee pledged to secure his own debt, the pledge is, by the terms of the certificate, put on inquiry as to the character and limitations of the trust, and if he accepts the pledge without inquiry he does it so at his peril."

Duncan vs. Jandon, 15th Wall, 165.

III.

In Ohio, the statute provides for the manner of disposing of the personal property of a deceased, including both notes and claims.

The statutes, 1st S. & C., 579, Sec. 72, is as follows: "The sale of personal property shall be made at public vendue, after at least fifteen days notice having been given in some newspaper in general circulation throughout the county, or by advertisement set up in at least five public places in the county where such sale is to take place." Sec. 252, ib., 614 provides for the sale of claims, debts and demands, belonging to the estate, and Sec 253, ib., 615, provides for the giving notice of the intended application to the Court for an order to sell such claims and demands, and Sec. 254, ib., ib., is as follows:

"That if the Court shall order a sale of debts or demands, the executor or administrator shall give public notice, as aforesaid, of the time and place of sale, three consecutive weeks previous to the day of sale, at which they shall be sold *to the highest* bidder, and the avails of such sale shall be accounted for by said executor or administrator as other money belonging to such estate."

Thus it will be perceived, that in all cases, including the sale of claims and notes, notice shall be given of the sale, and they shall be sold at public auction to the highest bidder, and in all States where the statute directs the manner of the disposition of the personal property, "purchasers must see to it that executors and administrators, in making sales, pursue the course marked out for them by the statutes, or by the orders of the Court, or they will take no title."

Perry on Trusts, Sec. 225, and cases there referred to.

In all sales by executors and administrators *good faith* in indispensable.

IV.

The will of Thomas T. Renick, does not authorize the Executor to put any more money into the firm of Tower, Claassen & Co.; it only provides that the interest, that Thomas T. Renick had and held therein, should be retained in said firm of Tower, Claassen & Co., so long as Benjamin F. Renick might in his discretion think it profitable. Had it not been for this clause of the will of Thomas T. Renick, the firm of Tower, Claassen & Co. would have been dissolved at his death; and it would have at once become the duty of his Executor to withdraw his funds from said firm. But this clause permitted Benjamin F. Renick, who was by said will appointed a trustee for that purpose, to permit the fund that, at the death of said Thomas T. Renick, was invested in said firm, to remain therein so long as he should deem it profitable. Nothing more; not a word is found about placing any more funds into said firm.

The will is necessarily silent as to the firm of B. F. Renick & Co., or placing funds into said firm. At the death of the testator the firm of B. F. Renick & Co. did not exist.

The testator may and probably did have confidence in Peter G. Tower, the head of the firm of Tower, Claassen & Co., but who now can say but that when Peter G. Tower retired the testator himself would also have retired. Suffice it to say, he never authorized any part of his estate to be placed into the firm of Benjamin F. Renick & Co. He had no funds there that he could authorize his Executor to suffer to remain therein. Benjamin F. Renick & Co., and Tower, Claassen & Co. are two different firms, composed of different parties.

Two things are abundantly evident, and they are sufficient to decide this case. First, that Benjamin F. Renick, the Executor of the estate of Thomas T. Renick, was taking a fund which did not belong to him, but which was entrusted to him for minors and legatees of Thomas T. Renick, and was using it for the purpose of his *own* trade. And, second, that J. C. Ayer & Co., and the Westboro Bank, were fully aware of that fact, and lent themselves, as far as it was possible for them, to the proceedings of this Executor, by which they were profited, and the estates of Thomas T. Renick and Renick Huston were wronged.

The rule is stated in Colt vs. Losnier, 9th Cowen, 342, to be, both in England and New York, "that any person receiving from an Executor the assets of his testator, knowing that this disposition of them is a violation of his duty, is to be adjudged as conniving with the Executor; and such person is responsible for the property thus received."

Wilson vs. Moore, 1st Mylne & Keen, 337.

Two things are abundantly evident, and they are sufficient to decide these cases:

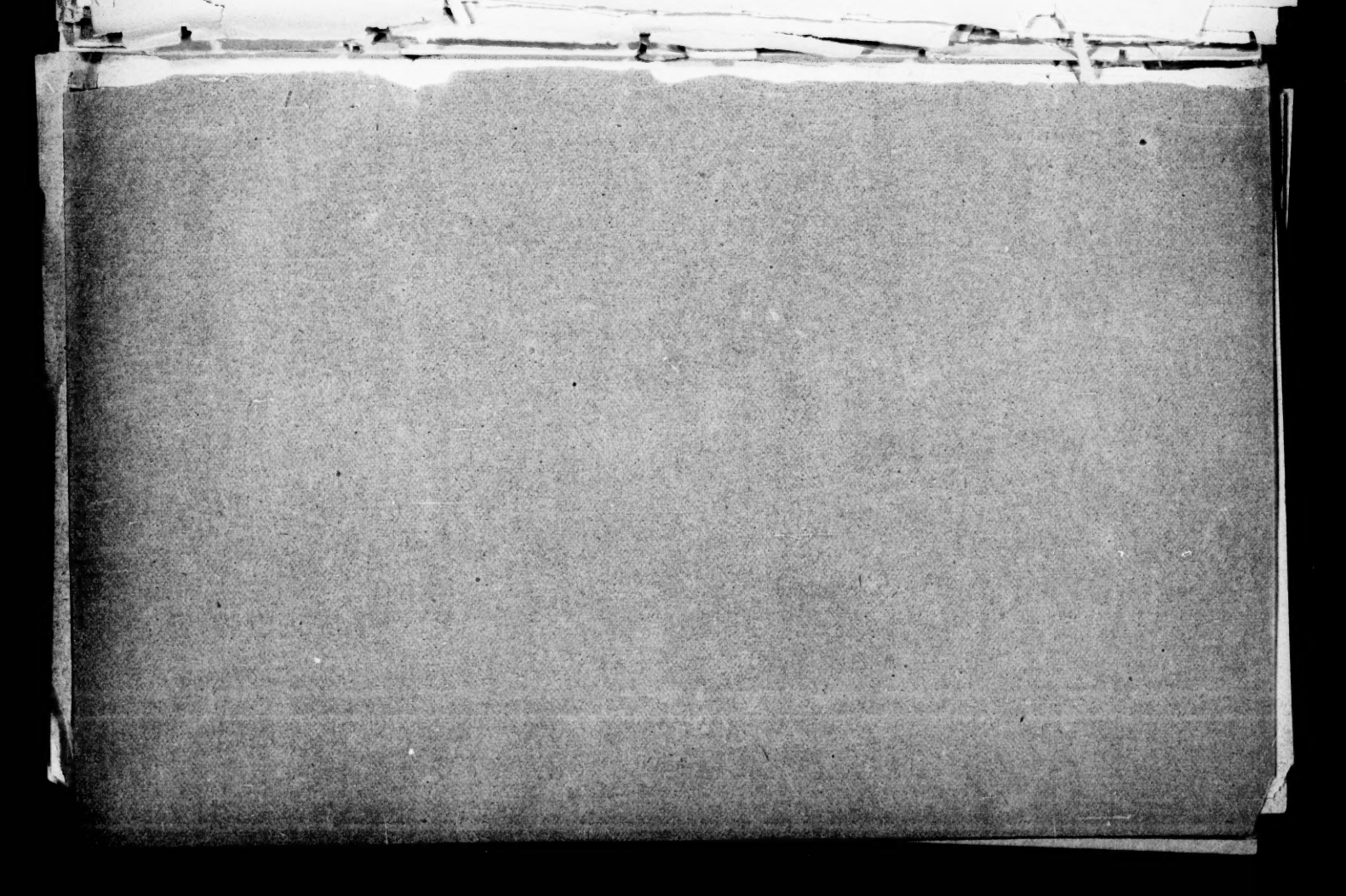
First, that the Executor of Thomas T. Renick was taking a fund which did not belong to him; but was intrusted to him for minors and minor heirs, and was using it for the benefit of B. F. Renick & Co., a firm in which he was interested. And,

Second, that J. C. Ayer & Co., and the Westboro Bank, were fully aware of the fact, and lent themselves as far as it was possible for them to do, to the proceedings of this Executor, by which they were more or less benefitted.

It is manifest that a breach of trust was committed by the Executor; for what can be a greater than that he should employ the estate, committed to his care, in the speculations of his own business? Nor is there any doubt but that J. C. Ayer & Co., and the Westboro Bank, were accessory to this breach of trust. That the pledge of the assets by an executor cannot be held even against a pecuniary or residuary legatee, and though for money advanced at the time, if under circumstances showing knowledge of an intended application, not conformable to or connected with the character of executor is a principle of equity well settled by numerous authorities.

McLead vs. Drummond, 17th Vesey, 152.
DeBonchont vs. Goldsmid, 5th Vesey, 211.
Hoffman vs. Hancock Mutual Life Ins. Co., 92 U. S. Rep., 161.

P. C. SMITH,
Solicitor for Plaintiffs.



SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1878.

NO. 221.

PALMER C. SMITH and JOB R. RENICK, Administrators, etc., of RENICK HUSTON, deceased, and EDWARD J. VAN METER, Administrator, etc., of THOMAS T. RENICK, deceased.
Appellants,

vs.

J. C. AYER & CO., JOEL D. HARVEY, J. E. FAY, BENJAMIN F. RENICK, and others,
Appellees.

Appeal in Equity from the Northern District of Illinois.

BRIEF FOR APPELLEES.

By C. C. BONNEY,

Counsel for B. F. RENICK and J. E. FAY.

CHICAGO:
THE CHICAGO LEGAL NEWS COMPANY, 47 & 49 DEARBORN ST.
1878.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1878.

NO. 221.

PALMER C. SMITH, and JOB R. RENICK, Administrators, etc., of RENICK HUSTON, deceased, and EDWARD J. VAN METER, Administrator, etc., of THOMAS T. RENICK, deceased,
Appellants.

vs.

J. C. AYER & CO., JOEL D. HARVEY, J. E. FAY, BENJAMIN F. RENICK, and others,
Appellees.

Appeal in Equity from the Northern District of Illinois.

BRIEF FOR APPELLEES.

By C. C. Bonney,

Counsel for B. F. Renick and J. Fay.

May it Please the Court:

The principal facts in this case are similar to those in the next case, No. 222 of the present term, of the same appellants against the same appellees, with the exception of the members of the firm of J. C. Ayer & Co., of Lowell, Mass., in place of the First National Bank of Westboro'. As counsel for the Bank, the principal appellee in the other case, I have made a much more elaborate preparation than seemed to be required at my

hands in the present case, in which the principal appellees are represented by other counsel. I therefore file in the present case a brief statement of points and authorities, and beg leave to refer, upon the argument, to my abstract and brief for the Westboro' Bank, in the succeeding case.

POINTS MADE AND AUTHORITIES CITED.

I.

Appellant's pleadings and proofs are fatally defective. They do not show a legal title, much less an equitable title, to the promissory note in controversy.

Grand Gulf R. R. Co. v. *Bryan*, 18 Miss. 234.

II.

The complainants sue as Ohio representatives of certain deceased persons, but the subject matter of controversy is a part of the Illinois assets of Thomas T. Renick, and is therefore governed by the Illinois law, or the general commercial law of the country.

1 Bouvier Inst. 83;

Story's Conflict of Laws, Secs. 512, 524, 525.

III.

The legal title to the note sued for, was duly transferred to J. C. Ayer & Co., for value paid at the time of

the transfer; and the right to assign and transfer it is unquestionable.

1 Red. Wills, 3d ed. 131, 419;
3 Ibd. 130, 137, 226, 236;
Furhall v. *Farhall*, L. R. 7 Eq. Ca. 286;
Hough v. *Bailey*, 32 Conn. 288;
Miles v. *Durnford*, 2 Simons, 239;
Whale v. *Booth*, 4 T. R. 625;
Dwight v. *Newell*, 15 Ills. 335;
Petrie v. *Clark*, 11 Serg. & R. 388.

IV.

The power granted by the will of Thomas T. Renick, is ample to authorize the pledge of the note in controversy to raise money; and to warrant the investment of the money so raised, in the printing-press works at Canton, Ohio.

Gandolfer v. *Walker*, 15 Ohio, N. S. 274;
Will of Thomas T. Renick, Secs. 1, 4, 8, 9, 11, Printed Case, p. 89.

V.

The supposed trust, which is set up by the appellants, is at best *a mere expectation*. It was not witnessed by any memorandum in writing; nor by any matter of record; and is without any force, under the statute of frauds, and for want of notice, at least as against the principal appellee.

VI.

The claim set up in the bill of complaint, is barred in equity by the concurrence and laches of the appellants, and of all the parties in interest, for whom they claim.

See dates of the principal events in the case.
Sloan v. *Graham*, 9 Legal News, 374;
Miles v. *Durnford*, 2 Simons, 239;

VII.

The note was not due when it was transferred to Ayer & Co. The extension of the time of payment by contract, operated to make the note the same in legal effect, as though originally made payable at the end of the extension. But even if overdue, the case shows no defense.
1 Parson's Contracts, 256, and cases cited.

VIII.

The transfer of the note in controversy to J. C. Ayer & Co., can not be impeached, *unless for actual fraud;* and no charge of such fraud is made in the pleadings, or shown by the proofs.
1 Daniel Nego. Inst. Secs. 184, 584, 769 to 777, 824 and cases cited;
1 Parson's Con. 254–5;
Walker et al. v. *Craig*, 18 Ills. 116.

IX.

The power of the executor of Thomas T. Renick, to pledge the note to J. C. Ayer & Co., for money advanced at the time, is perfectly clear.
Gordon v. *Preston*, 1 Watts, 385;
Jackson v. *Brown*, 5 Wend. 594;
Curtis v. *Leavitt*, 15 N. Y. 161;
Petrie v. *Clark*, 11 Serg. & R. 388;

Russell v. *Plaice*, 18 Beavan, 21;
Perry on Trusts, Sec. 225, and cases cited;
3 Red. Wills, 231;
Goodman v. *Simonds*, 20 How. 343;
Murray v. *Lardner*, 2 Wall. 110;
White v. *Springfield Bank*, 3 Sandf. 222;
N. Y. M. Iron Works v. *Smith*, 4 Duer, 362;

X.

Even B. F. Renick, the executor, whose good faith is not impeached, could not be held liable for any loss arising from the pledge of the note, and the investment of the money; and much less can Ayer & Co., to whom he transferred the note in controversy, be held responsible for any such loss.

3 Red. Wills, 413;
Christy et ux. v. *McBride*, 1 Scam. 78;
Rowan v. *Kirkpatrick*, 14 Ill. 1;
Walker et al. v. *Craig*, 18 Ill. 116;
Williams on Executors, 796;

Applying the principles of the foregoing authorities to the present case, I respectfully submit that the decree of the Court below should be affirmed.

I have not as yet received the abstract, points and authorities of counsel for appellants, and therefore can not now submit any reply thereto. But I desire to reserve the privilege of such reply, in case it should seem expedient, after an examination of appellant's brief.

C. C. Bonney,

Counsel for B. F. Renick and J. E. Fay.

156 Washington Street, Chicago.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1878.

PALMER C. SMITH and JOB R. RENICK, Adm'rs of Renick Huston, dec'd, and EDWARD J. VANMETER, Adm'r of Thomas T. Renick, dec'd,

vs.

JAMES C. AYER ET AL.

} Appeal from the Circuit Court of the United States, Northern District of Illinois.

ARGUMENT FOR APPELLEES,

J. C. AYER & CO.

GOUDY & SKINNER,

Attorneys for Appellees.

CHICAGO:

PRESS OF BEACH, BARNARD & CO., LEGAL PRINTERS, NO. 104 RANDOLPH STREET.

1879.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1878.

PALMER C. SMITH and JOB R. RENICK, Adm'rs of Renick Huston, dec'd, and EDWARD J. VANMETER, Adm'r of Thomas T. Renick, dec'd,

vs.

JAMES C. AYER ET AL.

} Appeal from the Circuit Court of the United States, Northern District of Illinois.

ARGUMENT FOR APPELLEES,

J. C. AYER & CO.

QUESTION IN THE CASE.

J. C. Ayer & Co. held a promissory note made by Joel D. Harvey to Thomas T. Renick, on the 15th day of July, 1872, for $39,250, payable two years after date, with interest at eight per cent. per annum, payable semi-annually, which had been extended, by endorsement on the back thereof, for two years from July 15th, 1874.

On the 1st of June, 1875, J. C. Ayer & Co. loaned to B. F. Renick & Co. $39,250, and took as evidence of the debt the promissory note of B. F. Renick & Co., drawing ten per cent. interest, payable semi-annually, the principal

falling due July 15th, 1877, and also took as collateral security the Harvey note assigned by Benjamin F. Renick, executor and trustee of Thomas T. Renick, who was then dead.

On the 3d day of February, 1876, the appellants, Smith and Renick, administrators, in the State of Ohio, of one Renick Huston, deceased, filed the bill of Complaint in the Circuit Court, for the Northern District of Illinois, against J. C. Ayer & Co., and other defendants, claiming that the note of Harvey belonged to the estate of Renick Huston, to compel a surrender and enjoin the collection.

The court below dismissed the bill, for the want of equity, upon a final hearing on the pleadings and proof.

The only question presented is, could the Ohio administrators of Renick Huston compel J. C. Ayer & Co. to surrender the Harvey note to them as a part of the assets of the estate of Renick Huston?

Counsel for appellants discuss another question. They claim that the Harvey note was an asset of the estate of Thomas T. Renick, if not of the estate of Renick Huston, and that the appellees, J. C. Ayer & Co., must surrender it to Edward J. VanMeter, administrator of Thomas T. Renick, the other appellant.

But this question is not in the record, and was not decided by the court below. We will refer to this and some other subordinate questions in the course of the argument, to show that the court below did not err in dismissing the bill as to any one of these points.

PART ONE:

I.

THE COMPLAINANTS IN THE BILL WERE NOT ENTITLED TO THE HARVEY NOTE.

1. *It was not a part of the assets of the estate of Renick Huston in Ohio.*

By the statutes of Illinois, when the deceased was not a resident of the State, and letters of administration have not been granted to a resident, the administrators appointed in another State may prosecute suits to enforce claims of the estate or to sell lands to pay debts. But if letters are issued to a resident after such suits are commenced, he must be substituted, and the privilege to the foreign representative ends.

Rev. Laws Ills., 1874, 112, §§ 42, 43.

A non-resident cannot be appointed an administrator or allowed to act as such.

Ibid., 108, § 18.

Suits to enforce claims are those to recover judgments on some form of indebtedness. The statute is not broad enough to allow suits to recover property in specie, even if brought from the State where administration was granted. The term "claims of the estate of the deceased" have a fixed and definite meaning; it signifies debts or liabilities to the decedent contracted in his lifetime.

This suit is not to collect a debt or enforce a claim, but it is to recover personal property—a promissory note, and is not embraced in the provision of the statute. It was instituted in the State court, and removed to the Circuit Court of the United States.

Every State may regulate the jurisdiction of its own courts, and a non-resident administrator can only enter the judicial tribunals of another State by permission.

The general rules of law touching the administration and distribution of estates of deceased persons prevail in Illinois. These rules require the appointment of an administrator in every State where assets are left; and title to property or notes does not vest in a foreign administrator. With rare exceptions the power and authority of an administrator is limited to a State or county where it is granted. He cannot maintain an action in any other State where he declares upon the title of the decedent, nor can he show title to any personal property in possession which was not within the jurisdiction of the probate court, in the place of the domicil of the decease at the time of such decease, or which has not been voluntarily carried there since that time from a foreign State, in which the deceased owed no debts. Where there is property belonging to the estate in a State other than the State of the domicil, there must be an auxilliary or ancillary administration. But these administrations are wholly independent of each other. This is in analogy to the practice in the ecclesiastical courts, where the Ordinary was held to have no authority beyond the limits of his own diocese, and that consequently he could confer none.

This is the established law in the United States.

3 Redfield on Wills, 23, 29.
Story's Conflict of Laws, §§ 512, 524, 525.
Aspden v. *Nixon*, 4 How., 467.
Stacy v. *Thrasher*, 6 How., 44.
McLean v. *Meck*, 18 How., 18.
Mackey v. *Coxe*, Ib., 104.
Clark v. *Clement*, 33 N. H., 563.
Caldwell v. *Harding*, 5 Blatch., 501.
Goodwall v. *Marshall*, 11 N. H., 88.
Dawes v. *Boylston*, 9 Mass., 337.
Porter v. *Heydock*, 6 Vt., 374.
Abbott v. *Coburn*, 28 Vt., 663.

Fay v. *Haven*, 3 Met., 109.
Mothland v. *Wirsman*, 3 Penn., 185.
Wood v. *Gold*, 4 McLean, 577.
Dixon v. *Ramsey*, 3 Cranch., 319.

The subject matter of this suit was a promissory note for $39,250, made by Harvey to Thomas T. Renick, which the complainants, administrators of Renick Huston, deceased, ask to have surrendered to them, and that their title thereto be established.

This note was given in Illinois as a part of the consideration for a tract of land in that State. The note from the day of its date to the 1st of June, 1875, remained in Illinois, when it was taken to Massachusetts by J. C. Ayer & Co., where it was when the bill was filed.

Renick Huston resided in Ohio, died there, and the complainants in the bill were appointed administrators in that State.

The note was not executed until long after the death of Renick Huston; it was not payable to his administrators, and was never in the possession of the complainants.

If it belonged to the estate of Renick Huston, therefore it was an asset in Illinois, and not in Ohio, and the Ohio administrators had no title to the note. It is not important to consider the effect of a voluntary delivery to them of the note, or whether it was indispensible to procure letters of administration in Illinois to reach the note, for there are no facts in this record on which to base such a discussion. It is enough to show that Smith and Renick, who derived their power and authority from the Probate Court of Pickaway County, Ohio, the domicil of Renick Huston, deceased, had no title to the note, that it did not belong to the assets of the estate in Ohio, and was not on its face the property of the decedent in any State.

Kelly v. Miller 45 Ill. 384
Judy v. Kelly 11 Ill. 285

The argument might rest here, for the bill was properly dismissed on this ground alone.

2. *The note did not belong, as an asset, to the estate of Renick Huston in any State.*

Andrew Huston died in 1854 in Pickaway County, Ohio, where he resided, seized of eighty acres of land in Cook County, Illinois, which he devised to his son Renick Huston, subject to the payment of his debts. Renick Huston did not become the owner of an absolute title, because the debts of his father were not paid. The land was sold by an administrator of Andrew Huston, appointed in Illinois to pay these debts, to Job R. Renick, to whom it was conveyed July 12th, 1871.

Long before this administrator's sale, in February, 1864, Renick Huston died in Pickaway County, Ohio, leaving a will, by which he bequeathed to Miss Anna Marsh $5,000, and, after some other legacies, gave and devised the residue of his estate, real and personal, to Thomas T. Renick, Mary Gregg, and Lavinia Renick, and appointed Thomas T. Renick executor.

While the title to the land passed from Andrew Huston by his administrator's sale direct to Job R. Renick, yet there was another sale and deed to him on the 11th day of July, 1871, under a decree in favor of Anna Marsh to compel the payment of the legacy. (Printed Record, pp. 70, 71.)

The title acquired by Job R. Renick was held by him in trust. The terms of this trust are not proved very clearly. It is admitted by a stipulation read in evidence, that by an arrangement, which did not appear of record, Job R. Renick held in trust for the benefit of the estate of Renick Huston and Thomas T. Renick. (Printed Record, p. 71.) But the stipulation reserved the right to dis-

prove any statement therein, and to prove any fact material to the case. (Printed Record, p. 72.)

In pursuance of this right Palmer C. Smith, one of the complainants, testified in regard to this trust. His testimony covered the whole subject, and therefore governs the same as if a stipulation had not been made.

Before examining Mr. Smith's testimony, it may be stated that Thomas T. Renick qualified as executor of Renick Huston, and received letters testamentary in February, 1864, from the Probate Court of Pickaway County, Ohio, and that he died in August, 1873, in that county, when the complainants, Smith and Renick, were appointed the administrators of Renick Huston. (Printed Record, (p. 71.)

It appears from the deposition of Mr. Smith that the land devised by Andrew Huston to his son Renick Huston was encumbered by judgments against Andrew Huston, and there had been sales for taxes, which had ripened into titles. Suits were pending, and some arrangement was made to stop the litigation, and have a judicial sale. The estate of Renick Huston had no money, and no property save this and other tracts of land thus loaded down with tax titles, judgments, and litigation. Thomas T. Renick advanced about $25.000 to buy in claims. The land was sold by the administrator of Andrew Huston, and by the master under the Marsh decree, and by direction of Thomas T. Renick, was struck off to Job R. Renick, and it was conveyed to him. Job R. Renick was not present, and knew nothing of the sale and deed to him until he was afterwards informed in Ohio.

The trust thus created was not the result of any agreement. While the witness speaks as if there was an agreement, to which Thomas T. Renick, Mr. Bonney, Mr. Fay and he were parties, the fact was that Thomas T. Renick

was the executor and one of the devisees of Renick Huston, and the others were lawyers employed by him as his advisers. Two parties were not represented. The plan was advised and adopted by Thomas T. Renick. (Printed Record, pp. 74–81.)

The trust was an implied or resulting trust, arising from the payment of the purchase money by Thomas T. Renick, by whose direction the deed was made to Job R. Renick. As the money was furnished by Thomas T. Renick as an individual, and not as executor or devisee, and not supplied by the estate of Renick Huston, it follows that the title was not held by Job R. Renick in trust for that estate, unless the relation of Thomas T. Renick was such as to prevent him from becoming a purchaser and such as to make his act enure to the benefit of the estate. But there was nothing to prevent him from buying the land for himself and in his own name, if he chose. One sale was made by Rosenthal, the administrator of Andrew Huston, and not of Renick Huston, and the other by the master in chancery, under a decree in favor of Miss Marsh, a legatee of Renick Huston. There was no duty devolved by law on Thomas T. Renick as an executor or devisee of Renick Huston which prevented him from acting for himself. There was no written declaration of trust by Job R. Renick, or any written evidence of its terms. The evidence of its existence vested in parol, and arose from the fact that Job R. Renick paid no consideration, and Thomas T. Renick bid off the land in Job's name, and paid the purchase money, and caused the deed to be made to Job.

If Thomas T. Renick intended that the estate of Renick Huston was to have any interest in the land, it rested on his will, and there was no equitable right which could be enforced against either Job or Thomas.

It is, therefore, certain that the statement in the stipulation that Job R. Renick held the title in trust for the estate

of Renick Huston and Thomas T. Renick is not true, but it was solely for the latter.

This land was sold July 15th, 1872, by Thomas T. Renick to Harvey for $157,000—one-fourth in cash and the residue in three annual payments—for which three principal notes of $39,250, payable in one, two and three years, were given, and three interest notes, all to Thomas T. Renick. A deed was executed to Harvey by Job R. Renick, and Thomas T. Renick, in his own right and as administrator of Andrew Huston and executor of Renick Huston, and Harvey made a trust deed to Fay to secure the notes. (Printed Record, pp. 71, 72.)

One of these notes—the one for $39,250, payable in two years—is in controversy in this suit, and the claim of ownership by the administrators of Renick Huston rests entirely on the false assumption that the land which was sold to Harvey, and for which the note was given for a part of the purchase money, was held by Job R. Renick in trust for the estate of Renick Huston and Thomas T. Renick.

It is further claimed that the sole interest of Thomas T. Renick in the trust was for the money he paid to obtain the title and free it from tax titles and encumbrances, and that this sum, having been re-paid, the whole of this note was owned by the estate of Renick Huston.

Mr. Smith testifies that Thomas T. Renick has received enough from the proceeds of the lands sold to re-imburse him for all the money he had paid. But he also testified that there had been no settlement or accounting to determine whether such advances had been re-paid, or to whom the unpaid notes belonged. (Printed Record, pp. 78, 81.)

The statements of Mr. Smith that the note in controversy belonged to the estate of Renick Huston, and that Job R. Renick, held the title in trust for the estate, are conclusions and inferences of the witness. He gives the facts,

and it is clear that his opinions are not well founded. The facts alone are evidence, and this court will draw its own conclusions.

In construing the language of Mr. Smith, and determining the weight to be given to his testimony, it is well to consider his position. Until after the death of Thomas T. Renick in 1873, his only relation to the estate of Renick Huston was that of an attorney under the employment of Thomas T. Renick. Whatever information he had came from his client or in transacting the business of his client. He succeeded Thomas T. Renick as one of the administrators of Renick Huston, (Job R. Renick being the other,) and also acted as attorney for Benjamin F. Renick, executor of Thomas T. Renick. In his deposition Mr. Smith testifies as to matters about which he could have no information other than that obtained by reason of his connection as attorney with these parties. He now appears in this record as an antagonist of Thomas T. Renick, his former client, endeavoring to transfer the note from his estate to that of Renick Huston ; and under these circumstances this testimony is entitled to little credit, unless corroborated by other proof, and it should be closely examined and confined to the statement of facts.

On the facts proven, we draw the following:

Conclusions of Law.

1. The title of Renick Huston during his lifetime was derived by will from his father, Andrew Huston, and was conditional, subject to the payment of debts.

2. During the lifetime of Renick Huston, an administrator of his father, was appointed in Illinois, and a petition to obtain an order for the sale of the land for the payment of debts was filed in County Court of Cook County, Illi-

nois, September 19th, 1863, and an order being obtained, a sale was made to Thomas T. Renick, who paid the purchase money and caused a deed to be made to Job R. Renick, so that the conditional title of Renick Huston ended, and the title passed from Andrew Huston to Job R. Renick, who held the title under an implied or resulting trust for Thomas T. Renick. There was no implied trust in favor of the estate of Renick Huston.

The trust claimed, if any existed, was an express one resting on the agreement of the parties, in parol, and therefore, void by the statute of frauds.

3. The land was sold to Harvey by Thomas T. Renick, who obtained a deed from Job R. Renick, and being at that time the administrator with the will annexed of Andrew Huston, the executor of Renick Huston, and one of the devisees, and also to that extent the beneficial owner, Thomas T. Renick joined in the deed. The legal title was conveyed by the execution of Job, and it is a fair inference that Thomas T. joined in his several characters to satisfy the purchaser and cover every possible claimant to the land.

The notes for the deferred payments were made to Thomas T. as an individual, and secured by a deed of trust on the land to J. Edwards Fay.

The notes thus became the property of Thomas T. Renick, to whom they were payable.

4. The administrators of Renick Huston had no title to or control over the land. They took the title to the *personal estate* in the State where the letters issued, but had no title to *real* estate in Ohio or Illinois. The title to the land, such as it was passed directly to the devisees in the will.

Phelps v. *Funkhauser*, 39 Ills., 402.
1 Williams on Exec., 650.

5. When the real estate was sold and converted into money or notes, such proceeds did not become personal estate, so as to pass to the administrators, but they were still real property, and belonged to the devisees of Renick Huston, even if the land belonged to his estate, and not to the administrators.

Dunning v. Ocean N. Bk. 81 N.Y. 504

6. When the land was sold to Harvey in 1872, if it was held in trust for the estate of Renick Huston, the administrators were not entitled to the proceeds, but the devisees, because there were no debts or specific legacies to be paid.

The money or notes would not go to the administrators merely to distribute to the residuary legatees and devisees. That was no part of the duty of administrators.

The residuary legatees and devisees, were Thomas T. Renick, Mary Gregg and Lavinia Renick. (Printed Record, p. 7.)

If, therefore, the land belonged to the estate of Renick Huston, or was held in trust for those entitled under his will, the real owners of the note are these devisees or their legal representatives, and not the administrators who filed this bill.

If the estate of Renick Huston had any interest in the proceeds of the sale to Harvey, it consisted of a claim on Thomas T. Renick, for a surplus over the amount required to re-imburse him for his expenses and advances. The estate had no title to the notes, and there might not be any surplus. That fact has never yet been ascertained for there has been no accounting.

II.

THE APPELEES, J. C. AYER & CO., ACQUIRED A GOOD TITLE TO THE HARVEY NOTE AS COLLATERAL SECURITY, AND CANNOT BE COMPELLED TO SURRENDER IT UNTIL THEIR DEBT IS PAID.

B. F. Renick & Co. borrowed from J. C. Ayer & Co. $39,250, and executed their note for that amount, dated May 26, 1875, payable July 15, 1877, with interest semi-annually at ten per cent.

Benjamin F. Renick was the executor of Thomas T. Renick, and had the possession of the note made by Harvey to the testator for $39,250, due by its terms July 15, 1874, but extended by endorsement thereon for two years. This note he pledged to J. C. Ayer & Co. as security for the note of B. F. Renick & Co., and assigned the same by an endorsement as executor, and thereby transferred the legal title to the note.

The principal note and the Harvey note thus assigned, were delivered to J. C. Ayer & Co., upon the payment by them of the $39,250. to B. F. Renick.

The endorsement of extension on the back of the Harvey note, reads: "Payment of the within note extended "as per contract of September 12th, 1874, now in the "hands of James B. Goodman, Esq., for a period of not "exceeding two years from July 15, 1874." Signed, "J. Edwards Fay, trustee, &c., B. F. Renick, executor "and trustee of Thomas T. Renick, deceased."

An agreement to that effect by the same persons was produced.

Letters testamentary, issued by the Probate Court of Pickaway County, Ohio, to B. F. Renick, on the estate of Thomas T. Renick, were submitted as evidence that he held the title to the note.

An abstract of title to the land conveyed by deed of trust to Mr. Fay, to secure the Harvey note, was produced, examined, and found to be good.

J. C. Ayer & Co. did not transact the business in person, but by an attorney. No member of the firm had any information on the subject. Their attorney had no information or suspicion that Renick Huston, or his executors, administrators, heirs, or representatives, had any interest whatever in the note pledged as collateral security, or in the land given to secure the note; and had no information that Job R. Renick held the land in trust for any person whatever. J. C. Ayer & Co. did not hear of the claim in behalf of the estate of Renick Huston, until the bill was filed. (Printed Record, pp. 84–88.)

On the trial it was proved that a paper was in the hands of J. B. Goodman, signed by "P. C. Smith, one of the "admr's and att'y for the estate of Ren. Huston "and Thomas T. Renick," in the same language as the one signed by Fay and B. F. Renick, consenting to an extension of the time, but having a different preamble, in which it is recited "which notes are now the prop- "erty of Renick Huston, dec'd."

It was further proved that the above paper was signed the day of its date September 12, 1874, and delivered to Goodman; and, later, about February 1, 1875, the other paper signed by Fay and R. B. Renick, was delivered to Goodman. (Printed Record, pp. 82, 83.)

The paper signed by Smith was not seen by the attorney of J. C. Ayer & Co., and was never heard of by him or them, until after the suit was commenced. (Printed Record, p. 87.)

While the appellants admit that J. C. Ayer & Co. had no notice that there was a claim in existence that the estate of Renick Huston owned the Harvey note, and that

the legal title was transferred by the executor of the payee to them, yet it is insisted that their attorney was chargeable with notice of the contents of the paper in Goodman's hands, which was signed by Smith.

The sole question touching this branch of the case rests upon the principle asserted by the appellants, that any fact calculated to put a purchaser of negotiable paper on the inquiry as to the ownership of the note, is sufficient to defeat the title when transferred in good faith and for full value. Such a rule may apply to real and personal property, but it has no application to negotiable paper. The law merchant protects the purchaser for value of commercial paper against all attacks upon his title, except where he can be convicted of an intent to commit a fraud. There is no difference in this regard, whether the purchase is made from a testator or his executor. The latter has the legal title as perfectly as the former, and for the purposes of commerce, the law merchant makes the rule universal. The rule attaches to the property as well as the parties, and follows the property wherever it goes. The shield of the law follows the ownership of the note in the hands of an executor precisely as it exists in the case of a testator.

Even if a purchaser has a suspicion of a defective title, or knowledge of circumstances which ought to excite suspicion in the mind of a prudent man, or even if he is guilty of gross negligence at the time of the transfer, the title will not be defeated. That can only be affected by actual fraud. Such is the settled law of this court.

Goodman v. *Simons*, 20 How., 343.
Murray v. *Lardner*, 2 Wal., 110.
Walker v. *Craig*, 18 Ills., 116.
Hough v. *Bailey*, 32 Conn., 288.
2 Parsons on Notes and Bills, 274.
Field v. *Shieffelin*, 7 J. Ch. R., 160.

It cannot be pretended that J. C. Ayer & Co. were guilty of any bad faith or fraud in the transaction. The utmost care was exercised by their attorney in the examination of the title to the real estate, the provisions of the will of the payee, the contract mentioned in the endorsement of extension, and all ordinary inquiries were made to ascertain whether the money was to be used for the proper purposes. They parted with the sum of $39,250, in the ordinary course of business, on the faith of the note thus pledged.

It is a mere speculation that the attorney would have been furnished with the contract signed by Smith if he had called on Goodman. The endorsement on the back of the note only referred to one contract, and that was the one which was produced. The paper signed by Smith, which it is now alleged ought to have been examined, was not described in the endorsement on the note. As the contract mentioned in this endorsement was produced, there was not the least reason to suppose that there was some other paper having a different description, which related to the subject.

The Harvey note was in the possession of B. F. Renick, executor of Thomas T. Renick, the payee. If the complainants, administrators of Renick Huston, had any interest in that note, they were guilty of neglect in allowing the administrator of the payee, who had the legal title, to keep the control of the paper. By reason of that fact he was able to borrow from J. C. Ayer & Co. this large sum of money. If any persons are to suffer, it should be the complainants, by whose carelessness B. F. Renick was able to borrow from J. C. Ayer & Co. Independently of the question of right of foreign administrators, or administrators in any State, to recover the possession of this note on the merits, J. C. Ayer & Co. acquired a good title, and they cannot be deprived of their right until the debt contracted on the faith of the note is fully paid.

PART TWO.

I.

THE ADMINISTRATOR OF THOMAS T. RENICK WAS NOT ENTITLED TO ANY RELIEF UNDER THE BILL FILED IN THIS CAUSE.

The counsel for appellants have not seriously contended that the administrators of Renick Huston were entitled to a decree upon the bill filed, but they have discussed, at large, the right of the administrator *de bonis non* of Thomas T. Renick, the payee of the note, to a decree against J. C. Ayer & Co. for the possession of the Harvey note. That question is not in this record. The original bill was filed by Palmer C. Smith and Job R. Renick, administrators *de bonis non* of the estate of Renick Huston, with the will annexed, and the prayer of the bill is that the Harvey note for $39,250, and the trust deed given to secure the payment of the same, may, by the final decree of the court, be declared to be the property of complainants, and be delivered and surrendered to them by the said J. C. Ayer & Co., and that Joel D. Harvey, the maker, be decreed to pay the said note and interest to them, and perpetually enjoined from paying the same to any other persons or parties.

Printed Record, 2–6.

1. *There is no prayer by Van Meter for relief.*

After the bill was filed, B. F. Renick resigned his executorship of Thomas T. Renick, and Edward J. Van Meter was appointed, on the 23d day of February, 1876, admintor *de bonis non*, with the will annexed, by the probate court of Pickaway County, Ohio; and, on the 27th day of April, a supplemental bill was filed by the original complainants and the said Van Meter, setting forth the pro-

ceedings in the cause and the appointment of the said Van Meter; and after making this statement, the bill concludes as follows:

"To the end, therefore, that the said defendants to said "bill, and amended bill, may answer the matters herein "charged by way of supplement, and that your orator, "the said Edward J. Van Meter, may be allowed to prose- "cute said suit as co-complainant with said complainants, "Palmer C. Smith, and Job R. Renick and may have the "relief prayed for in said bill, may it please your Honors to "grant unto your orators a writ of summons against said "defendants, as prayed for in said original bill, and that "they be directed to answer the matters herein charged "by way of supplement; and your orators will ever pray." (Printed Record, p. 37.)

[NOTE.—There is a misprint in the prayer of this supplemental bill, but a stipulation has been filed giving the correct language, and this is quoted above.]

It will thus be seen that Van Meter, as administrator of Thomas T. Renick, does not ask in the supplemental bill that the note be surrendered to him; nor does he assert that it belongs to the estate of Thomas T. Renick, but simply asks that the prayer of the original bill be granted, and that was to surrender the note to the administrators of Renick Huston as their property.

Some complaint is made in the brief of counsel for appellants that the court below did not consider this question, or the question of the right of the administrator of Thomas T. Renick to the note. The reason is evident — no such question was presented for decision. It is not contained in the pleadings, and was not argued in the court below. It is now presented to this court for the first time.

It would seem, further, to be unnecessary to argue the questions discussed in the brief of appellants; but lest we

should be mistaken in our view of this matter, we will make some suggestions in regard to the points of that branch of the case.

2. *The administrators of Renick Huston, and the administrator of Thomas T. Renick, cannot be joined in a suit for the recovery of the note.*

The note either belongs to the estate of Renick Huston, or to the estate of Thomas T. Renick. There is no joint ownership in it, or joint right to control it. It is not claimed by counsel that there is any joint interest, or a right to a decree that it shall be transferred to these estates jointly. The claim is, that it shall be transferred to the estate of Thomas T. Renick. That can only be asserted by a bill filed by the administrator of Thomas T. Renick. If proper to make the representatives of Renick Huston parties at all, they should be defendants.

3. *The Ohio administrator of Thomas T. Renick had no legal title to this note, because if an asset of that estate, it was in Illinois, and not in Ohio.*

This point has been fully discussed, and the authorities cited in regard to the right of the Ohio administrators of Renick Huston to recover the note, and it is not necessary to repeat them here.

4. *The executor of the payee of the Harvey note had the power to pledge it to secure the note of B. F. Renick & Co. to J. C. Ayer & Co.*

While it cannot be denied that the executor of the payee of a promissory note obtains the legal title, and may assign the note to a purchaser, or as security, yet it is insisted that where notice is given that the executor is misapplying the money received, the assignee acquires no

right to the note. This may be conceded in this case without impairing the title of J. C. Ayer & Co. to the Harvey note.

We admit that J. C. Ayer & Co. knew that the money they loaned was to the firm of B. F. Renick & Co., who gave their note, and that the Harvey note belonged to the estate of Thomas T. Renick. But the question remains, Was such use of the Harvey note a waste of the assets, or one prohibited by law?

The firm of Tower, Classen & Co. were engaged in manufacturing chromatic printing presses at Canton, Ohio, and Thomas T. Renick in his lifetime, and at his death, was a member of the firm. The will directed the brother of the testator, Benjamin F. Renick, to continue the business, and conferred upon him full control and discretion. It was to be continued for the benefit of Benjamin F. himself, the children of his sister Catharine Darse, deceased, the children of a brother, Jonathan Renick deceased, and a son of another sister, Mary Gregg, and the interest of the testator in the firm was bequeathed to Benjamin F. in trust for himself, and said nephews and nieces, to be held and controled by him as long as he in his discretion may deem advisable—each nephew and niece to take one share with the brother. (Printed Record, p. 89.)

Benjamin F. Renick was named as executor, and after the will was proved letters testimony issued to him.

The firm of Tower, Classen & Co., mentioned in the will, became the firm of Benjamin F. Renick & Co., the only change being in the name and membership of the firm. (Printed Record, p. 84.)

Counsel for appellants contend that the will did not authorize the executor, Benjamin F. Renick, to use any of the money, notes or property of the estate, in the business of that firm, which was not embarked in the firm by the

testator in his lifetime. Reference is made to *Burwell* v. *Mandeville's Executors*, 2 Howard, 206, in support of the proposition.

The question decided in that case was that the executors of an estate were not liable for debts contracted after the death of a testator, in a business continued as directed in the will by the testator's partners, none of whom were either executors or trustees. The cases cited in the opinion were to the same effect. For the determination of that question, the rule is laid down that it must appear in clear and unambiguous language that it was the intention of the testator to make his general assets liable for debts contracted in the continued trade after his death. Mr. Justice STORY construed the will of Mandeville in that case, by an examination of all it parts not to show an intention of the testator to charge his general assets with such a liability.

The case now before the court is not an effort to compel an executor to pay a debt contracted by a surviving partner after the death of the testator. The executor voluntarily and in the exercise of his discretion borrowed money and pledged a note belonging to the estate. It may have been necessary to obtain money to pay liabilities contracted before the death of the testator, for the payment of which his entire estate was bound, and J. C. Ayer & Co., were justified in assuming that the executor was not committing a waste or breach of trust.

An examination of the will shows the most complete power in the executor. He had the entire management of all the business of the estate, including that of the continued firm. The same persons for whose benefit the firm business was to be continued, were the residuary legatees, so that there was no conflict of interest as in the Mandeville case.

After the payment of debts, a devise was made by the testator to his brother Job of the home farm. Then followed a specific bequest to his brother Benjamin F., in trust for his sister Mary Gregg, and his nephews and neices, of an interest in a coal and coke company with power to sell at private or public sale, for cash or on credit as he, in his wisdom, thought best.

Then follows the provision about the continuance of his interest in the partnership of Tower, Classen & Co.

Then a bequest of $500 annually to a brother Felix; then a bequest of a horse to his mother-in-law; then direction to build a fence around the cemetery lot.

Then follows a direction to the executor to receive the statement of his brother Job in settling partnership matters with him; then the residuary clause, and last, Benjamin F., is nominated executor, " and having every confidence in his integrity," the testator directs that no bond be required of him as executor.

This will exhibited entire confidence by the testator in his brother named as executor, and with little exception left everything to his discretion. He was to conduct the firm business, of which the testator was a partner, and became himself, by the bequest, a member of that firm. He had the knowledge of the condition of the estate and of the firm as well as of the needs of each. By express declaration everything appertaining to the estate and the firm was left to his discretion, save the specific devise and bequests, and the note in controversy was not specifically disposed of by the will. The note belonged to the residuary legatees, and the residuary legatees were all interested in the firm engaged in manufacturing chromatic printing presses.

When, therefore, the brother, executor, trustee and partner, proposed to borrow money for the benefit of the

firm of B. F. Renick & Co., and pledge the Harvey note as security, J. C. Ayer & Co. were not required by law to assume that he was about to convert the note to his own use, and commit a devastavit of the estate. They know the executor had full power to assign and pledge the note; they knew that he had the right to borrow money for the benefit of the estate; they know that it was his duty to pay the debts of the testator whether individual, or as a member of the manufacturing firm; and they did not know of any purpose to use the money for an unlawful purpose.

Under these circumstances the same rule applies as in the purchase of any negotiable paper, as settled in *Goodman* v. *Simmonds*, 20 How., 343; *Murray* v. *Lardner*, 2 *Wall.*, 110; and *Hough* v. *Bailey*, 32 Conn., 288. Proof must be made of actual fraud on the part of J. C. Ayer & Co. to defeat their title to the note.

But who is it that questions the act of the executor, Benjamin F. Renick, in the exercise of his discretion to borrow money? It is not one of the persons made specific legatees, or the person to whom a specific devise was made, or the residuary legatees. We may assume that all these are satisfied. It is not a creditor; there is no evidence that there is a creditor. We may assume that every creditor is satisfied, or there is none. The only person who now asserts that the executor, the brother of the testator, vested by the will with the fullest discretion, is the administrator *de bonis non*, a stranger to the testator, and in whom he reposed no confidence. He seeks to revise the discretion of his predecessor. There was not a want of power in Benjamin F. Renick as executor to assign the note, for he had the power beyond dispute. There was the right to use the general assets of the estate for some purposes in the firm of Benjamin F. Renick & Co., if for none other, to pay the liabilities contracted in the lifetime of the testator.

The administrator *de bonis non* now undertakes to rescind the acts of his predecessor, whereby a large sum of money was obtained from parties who acted with the utmost good faith.

5. *The administrator de bonis non is estopped from reclaiming the Harvey note.*

J. C. Ayer & Co. loaned $39,250 to Benjamin F. Renick & Co., and that firm received the money. The residuary legatees of Thomas T. Renick were interested in that firm, and represented by one of their number as trustee for himself and them. In this manner the residuary legatees have received and used the money of J. C. Ayer & Co.

Suppose the Harvey note is recovered by the administrator, and the money collected thereon, to whom is it to go? Directly to the residuary legatees, and among them Benjamin F. Renick, the man who obtained the money of J. C. Ayer & Co.

A decree in favor of the administrator would be repugnant to justice, and violate the ordinary principles of common honesty.

6. *The time for the payment of the note was extended, and it is immaterial whether it was extended or not.*

This is a controversy between the payee and an assignee of a note, as to which has the better title. It does not relate to any question between the maker and the payee, or the maker and the assignee. A party taking paper past due, takes it subject only to such equities as may exist between the parties to the paper, and not to such as may exist between any one or more of such parties and third persons. The reason being, that such equities

are collateral, and are not suggested by the paper. The defense must arise from the note itself, or the transaction in which the note originated, and not from any collateral matter.

1 Parsons on Cont., Book 1, Chap. 16, § 4.
Burroughs v. *Moss*, 10 B. & C., 563.

GOUDY & SKINNER,
For Appellees, J. C. Ayer & Co.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1878.

PALMER C. SMITH and JOB R. RENICK, Adm'rs of Renick Huston, dec'd, and EDWARD J. VANMETER, Adm'r of Thomas T. Renick, dec'd,

vs.

JAMES C. AYER ET AL.

} Appeal from the Circuit Court of the United States, Northern District of Illinois

---

BRIEF FOR APPELLEES,

J. C. AYER & CO.

GOUDY & SKINNER,

Attorneys for Appellees.

CHICAGO:

PRESS OF BEACH, BARNARD & CO., LEGAL PRINTERS, NO. 104 RANDOLPH STREET.

1879.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1878.

PALMER C. SMITH and JOB R. RENICK, Adm'rs of Renick Huston, dec'd, and EDWARD J. VANMETER, Adm'r of Thomas T. Renick, dec'd,
vs.
JAMES C. AYER ET AL.

Appeal from the Circuit Court of the United States, Northern District of Illinois.

BRIEF FOR APPELLEES,

J. C. AYER & CO.

PART ONE.

I.

THE COMPLAINANTS IN THE BILL WERE NOT ENTITLED TO THE HARVEY NOTE.

1. *It was not a part of the assets of the estate of Renick Huston in Ohio.*

Rev. Laws Ills., 1874, 112, §§ 42, 43.
Ibid., 108, § 18.
3 Redfield on Wills, 23, 29.
Story's Conflict of Laws, §§ 512, 524, 525.
Aspden v. *Nixon*, 4 How., 467.

Stacy v. *Thrasher*, 6 How., 44.
McLean v. *Meck*, 18 How., 18.
Mackey v. *Coxe*, Ib., 104.
Clark v. *Clement*, 33 N. H., 563.
Caldwell v. *Harding*, 5 Blatch., 501.
Goodwall v. *Marshall*, 11 N. H., 88.
Dawes v. *Boylston*, 9 Mass., 337.
Porter v. *Heydock*, 6 Vt., 374.
Abbott v. *Coburn*, 28 Vt., 663.

2. *The note did not belong, as an asset, to the estate of Renick Huston in any State.*

This is shown by the facts stated in the argument, pp. 6–10.

On the facts proven, we draw the following:

Conclusions of Law.

1. The title of Renick Huston during his lifetime was derived by will from his father, Andrew Huston, and was conditional, subject to the payment of debts.

2. During the lifetime of Renick Huston, an administrator of his father, was appointed in Illinois, and a petition to obtain an order for the sale of the land for the payment of debts was filed in County Court of Cook County, Illinois, September 19th, 1863, and an order being obtained, a sale was made to Thomas T. Renick, who paid the purchase money and caused a deed to be made to Job R. Renick, so that the conditional title of Renick Huston ended, and the title passed from Andrew Huston to Job R. Renick, who held the title under an implied or resulting trust for Thomas T. Renick. There was no implied trust in favor of the estate of Renick Huston.

The trust claimed, if any existed, was an express one

resting on the agreement of the parties, in parol, and therefore, void by the statute of frauds.

3. The land was sold to Harvey by Thomas T. Renick, who obtained a deed from Job R. Renick, and being at that time the administrator with the will annexed of Andrew Huston, the executor of Renick Huston, and one of the devisees, and also to that extent the beneficial owner, Thomas T. Renick joined in the deed. The legal title was conveyed by the execution of Job, and it is a fair inference that Thomas T. joined in his several characters to satisfy the purchaser and cover every possible claimant to the land.

The notes for the deferred payments were made to Thomas T. as an individual, and secured by a deed of trust on the land to J. Edwards Fay.

The notes thus became the property of Thomas T. Renick, to whom they were payable.

4. The administrators of Renick Huston had no title to or control over the land. They took the title to the *personal estate* in the State where the letters issued, but had no title to *real* estate in Ohio or Illinois. The title to the land, such as it was passed directly to the devisees in the will.

Phelps v. *Funkhauser*, 39 Ills., 402.
1 Williams on Exec., 650.

5. When the real estate was sold and converted into money or notes, such proceeds did not become personal estate, so as to pass to the administrators, but they were still real property, and belonged to the devisees of Renick Huston, even if the land belonged to his estate, and not to the administrators.

61 N. Y. 504

6. When the land was sold to Harvey in 1872, if it was held in trust for the estate of Renick Huston, the administrators were not entitled to the proceeds, but the devisees, because there were no debts or specific legacies to be paid.

The money or notes would not go to the administrators merely to distribute to the residuary legatees and devisees. That was no part of the duty of administrators.

The residuary legatees and devisees, were Thomas T. Renick, Mary Gregg and Lavinia Renick. (Printed Record, p. 7.)

If, therefore, the land belonged to the estate of Renick Huston, or was held in trust for those entitled under his will, the real owners of the note are these devisees or their legal representatives, and not the administrators who filed this bill.

If the estate of Renick Huston had any interest in the proceeds of the sale to Harvey, it consisted of a claim on Thomas T. Renick, for a surplus over the amount required to re-imburse him for his expenses and advances. The estate had no title to the notes, and there might not be any surplus. That fact has never yet been ascertained for there has been no accounting.

II.

THE APPELEES, J. C. AYER & CO., ACQUIRED A GOOD TITLE TO THE HARVEY NOTE AS COLLATERAL SECURITY, AND CANNOT BE COMPELLED TO SURRENDER IT UNTIL THEIR DEBT IS PAID.

The sole question touching this branch of the case rests upon the principle asserted by the appellants, that any fact

calculated to put a purchaser of negotiable paper on the inquiry as to the ownership of the note, is sufficient to defeat the title when transferred in good faith and for full value. Such a rule may apply to real and personal property, but it has no application to negotiable paper. The law merchant protects the purchaser for value of commercial paper against all attacks upon his title, except where he can be convicted of an intent to commit a fraud. There is no difference in this regard, whether the purchase is made from a testator or his executor. The latter has the legal title as perfectly as the former, and for the purposes of commerce, the law merchant makes the rule universal. The rule attaches to the property as well as the parties, and follows the property wherever it goes. The shield of the law follows the ownership of the note in the hands of an executor precisely as it exists in the case of a testator.

Even if a purchaser has a suspicion of a defective title, or knowledge of circumstances which ought to excite suspicion in the mind of a prudent man, or even if he is guilty of gross negligence at the time of the transfer, the title will not be defeated. That can only be affected by actual fraud. Such is the settled law of this court.

Goodman v. *Simons*, 20 How., 343.
Murray v. *Lardner*, 2 Wal., 110.
Walker v. *Craig*, 18 Ills., 116.
Hough v. *Bailey*, 32 Conn., 288.
2 Parsons on Notes and Bills, 274.
Field v. *Shieffelin*, 7 J. Ch. R., 160.

It is a mere speculation that the attorney would have been furnished with the contract signed by Smith if he had called on Goodman. The endorsement on the back of the note only referred to one contract, and that was the one which was produced. The paper signed by Smith, which it is now alleged ought to have been examined, was not

described in the endorsement on the note. As the contract mentioned in this endorsement was produced, there was not the least reason to suppose that there was some other paper having a different description, which related to the subject.

PART TWO.

I.

THE ADMINISTRATOR OF THOMAS T. RENICK WAS NOT ENTITLED TO ANY RELIEF UNDER THE BILL FILED IN THIS CAUSE.

1. *There is no prayer by Van Meter for relief.*

The prayer in the supplemental bill is as follows:

"To the end, therefore, that the said defendants to said "bill, and amended bill, may answer the matters herein "charged by way of supplement, and that your orator, "the said Edward J. Van Meter, may be allowed to prose- "cute said suit as co-complainant with said complainants, "Palmer C. Smith, and Job R. Renick and may have the "relief prayed for in said bill, may it please your Honors to "grant unto your orators a writ of summons against said "defendants, as prayed for in said original bill, and that "they be directed to answer the matters herein charged "by way of supplement; and your orators will ever pray." (Printed Record, p. 37.)

[NOTE.—There is a misprint in the prayer of this supplemental bill, but a stipulation has been filed giving the correct language, and this is quoted above.]

It will thus be seen that Van Meter, as administrator of Thomas T. Renick, does not ask in the supplemental bill that the note be surrendered to him; nor does he assert

that it belongs to the estate of Thomas T. Renick, but simply asks that the prayer of the original bill be granted, and that was to surrender the note to the administrators of Renick Huston as their property.

2. *The administrators of Renick Huston, and the administrator of Thomas T. Renick, cannot be joined in a suit for the recovery of the note.*

The note either belongs to the estate of Renick Huston, or to the estate of Thomas T. Renick. There is no joint ownership in it, or joint right to control it.

3. *The Ohio administrator of Thomas T. Renick had no legal title to this note, because if an asset of that estate, it was in Illinois, and not in Ohio.*

This point has been fully discussed, and the authorities cited in regard to the right of the Ohio administrators of Renick Huston to recover the note, and it is not necessary to repeat them here.

4. *The executor of the payee of the Harvey note had the power to pledge it to secure the note of B. F. Renick & Co. to J. C. Ayer & Co.*

5. *The administrator de bonis non is estopped from reclaiming the Harvey note.*

GOUDY & SKINNER,
For Appellees, J. C. Ayer & Co.